



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Water Rights

JERRY D. OLDS
State Engineer/Division Director

Beaver River

STATE OF UTAH

DIVISION OF WATER RIGHTS

IN THE MATTER OF:

**CALVIN YARDLEY
C/O FLOYD YARDLEY
PO BOX 107
BEAVER, UT 84713**

**FLOYD YARDLEY
PO BOX 107
BEAVER, UT 84713**

**PAT YARDLEY
PO BOX 469
BEAVER, UT 84713**

Respondents

CONTROL STRUCTURE NOTICE

SEAA NO. 1289

WATER RIGHTS: 77-542, 544, 926, 927,
928, 929, 632, 638, 639, 635

I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

(1) *To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, except as provided by Subsection (4), shall construct or install and maintain controlling works and a measuring device at:*

- (a) *each location where water is diverted from a source; and*
- (b) *any other location required by the state engineer.*

(2) *A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.*

(3) *The state engineer shall approve the design of:*

- (a) *the measuring device; and*

(b) *controlling works so that the state engineer or a water commissioner may regulate and lock the works.*

(6) *If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:*

SCANNED



- (a) forbid the use of water until the user complies with the state engineer's requirement; and*
(b) commence enforcement proceedings authorized by Section 73-2-25.

II. STATEMENT OF FACTS

1. The Respondents are the water users under the captioned distribution accounts and owners of the captioned water rights. Water under said rights is distributed to the Respondents through a diversion on the Beaver River into Patterson Ditch at a point in the NE corner, Sec 29, T 29S, R 7W, SLBM.
2. Ron Roberts, water commissioner, has indicated he is unable to regulate the flows at the Respondents' diversion because of the lack of a control structure. In order for the Commissioner to properly administer the delivery of water to the Respondents, the conditions of the Respondents' facilities require corrective action.

III. ACTIONS REQUIRED

1. The Respondents are hereby notified that the Respondents' facilities **must be equipped with a lockable headgate or control structure** in a manner that will provide the Commissioner an ability to fully control the diversion of water and to securely lock the headgate in place.
2. Prior to commencing the required work and during the construction and repairs, the Respondents shall consult with the Commissioner to assure that the planned improvements will satisfy the requirements of this Notice.
3. The area surrounding the Respondents' facilities is to be made sufficiently clear of vegetation to allow reasonable access by the Commissioner. If access to the facilities is restricted the Commissioner must be provided keys.
4. The Respondents' facilities are to be perpetually maintained in good working order as described above.
5. **The required work must be completed and the Commissioner notified of said completion no later than April 1, 2009.**

IV. ADDITIONAL AGENCY ACTION

1. The Respondents are encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.
2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water under the above captioned water rights until the

December 9, 2008

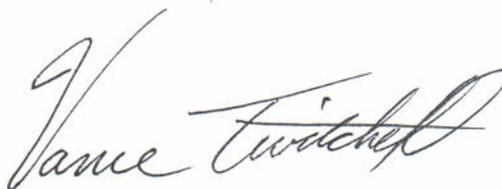
Subject: Control Structure and Measuring Device Notice

Respondents have complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).

3. If an Order forbidding the use of water is issued and is violated by the Respondents, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation of an Order, the Respondents may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation.

Thank you for your cooperation in attending to this matter in a timely manner. If you have any questions concerning this notice, please contact me by phone at 801-538-7374 or by e-mail at VanceTwitchell@Utah.gov or Kurt Vest, Regional Engineer, by phone at 435-586-4231 or by e-mail at KurtVest@Utah.gov. Ron Roberts, Water Commissioner, may be contacted by phone at 435-438-2473.

Dated this 9th day of December, 2008



Vance Twitchell
Distribution Engineer

cc: Kurt Vest, Regional Engineer
Kerry Carpenter, Enforcement Engineer
Ron Roberts, Water Commissioner
Steven Gale, Deputy Water Commissioner

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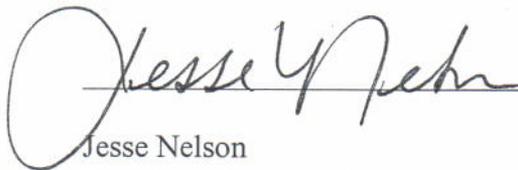
CERTIFICATE OF MAILING

I, the undersigned, certify that on this 9th day of December, 2008, I mailed a copy of the foregoing Notice by certified U.S. Mail to the following:

**CALVIN YARDLEY
C/O FLOYD YARDLEY
PO BOX 107
BEAVER, UT 84713**

**FLOYD YARDLEY
PO BOX 107
BEAVER, UT 84713**

**PAT YARDLEY
PO BOX 469
BEAVER, UT 84713**



Jesse Nelson
Division of Water Rights
Field Services Secretary

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