

**BEFORE THE DIVISION OF WATER RIGHTS**

<p>In The Matter Of:</p> <p><b>Leon Nielsen</b></p> <p><b>RESPONDENT</b></p>	<p><b>ORDER FORBIDDING USE OF WATER</b></p> <p>SEAA No. 1365 DISTRIBUTION ACCOUNT NO. 100694 WATER RIGHTS: 43-1660</p>
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**I. STATEMENT OF LAW AND JURISDICTION**

1. The Division of Water Rights ("Division") issues this Order Forbidding Use of Water ("Order") under UTAH CODE ANN. § 73-5-1 and in accordance with UTAH ADMIN. CODE R. 655-15. This Order is exempt from the Utah Administrative Procedures Act in accord with UTAH CODE ANN. Subsection 63G-4-102(2).
2. The State Engineer, as the director of the Division, is charged with the general administrative responsibility over the waters of the State. UTAH CODE ANN. § 73-2-1.
3. The Division administers the waters of the state under the direction of the State Engineer. UTAH CODE ANN. §§ 73-2-1 and 73-2-1.1.
4. The State Engineer is authorized to enact rules governing water distribution systems, water commissioners, water measurement and reporting that are consistent with UTAH CODE ANN. Chapter 73-5, "Administration and Distribution." UTAH CODE ANN. § 73-2-1(5)(a) and 73-2-1(5)(b).
5. "Assessment" means monies paid by water users to the State Engineer specifically to defray the costs of a Distribution System as described in UTAH CODE ANN. Subsection 73-5-1(3). UTAH ADMIN. CODE R. 655-15-4 (a).
6. "Distribution Account" means the accounting unit established by the Division of Water Rights ("Division") for calculation of assessments and for tracking the assessments made to and payments collected from each water user. UTAH ADMIN. CODE R. 655-15-4 (d).
7. "Distribution Order" means an Order of the State Engineer interpreting the water rights included within a Distribution System, confirming priorities of water rights, giving instruction or direction regarding the regulation, distribution, and/or measurement of water based on those water rights, and may order the installation or repair of measuring devices, head gates, and control structures as authorized by UTAH CODE ANN. Chapter 73-5. Distribution Orders are enforceable under the provisions of UTAH CODE ANN. §§ 73-2-25 and 73-2-26. UTAH ADMIN. CODE R. 655-15-4 (e).
8. "Enforcement Tag" means an orange tag attached by a Water Commissioner to or near a control structure or water measuring device in situations where the water user is ordered to comply with the Water Commissioner's regulation and distribution of water. An enforcement tag constitutes

a distribution order and is enforceable in the same manner. UTAH ADMIN. CODE R. 655-15-4 (j).

9. "Respondent" means any person to whom the Division issues a Notice or Order pursuant to authority granted under UTAH CODE ANN. Chapter 73-5.
10. "Violation," as used in this Order, means any action taken by the Respondent, the Respondent's agent, or any person acting under the direction or authority of the Respondent, intended to circumvent or avoid the restrictions on water use ordered herein. Such action may include but is not limited to removal or alteration of an Enforcement Tag placed by a duly appointed official of the Division.
11. UTAH CODE ANN. § 73-5-1 states in part: *If a water user fails to pay the assessment as provided by Subsection (3)(a), the state engineer may ... forbid the use of water by the delinquent water user or the delinquent water user's successors or assignees, while the default continues.*
12. This Order constitutes a Distribution Order in accord with the provisions of UTAH ADMIN. CODE R655-15-4.
13. UTAH CODE ANN. § 73-2-25 states in part: *The state engineer may commence an enforcement action under this section if the state engineer finds that a person violates a written distribution order from the state engineer.*

## II. STATEMENT OF FACTS

1. On November 10, 2009 a Delinquent Assessment Collection Notice ("Notice") was mailed to the Respondent at the address of record.
2. The Notice recited certain facts pertaining to the captioned Distribution Account, which facts are herewith incorporated into this Order.
3. The Notice advised the Respondent to pay the outstanding unpaid balance of the captioned Distribution Account within 30 days of the date of the Notice.
4. The Notice informed the Respondent that if payment of the outstanding balance was not made within the time allowed, the Division would issue an Order Forbidding the Use of Water until payment is made.
5. As of the date of this Order, the Respondent has not paid the balance due on the captioned Distribution Account as advised in the Delinquent Assessment Collection Notice.
6. As of the date of this Order, the unpaid balance due on the captioned Distribution Account is **\$286.87**, including prior assessments and delinquent penalties, which amount is immediately due and payable.

### III. ORDER

On the grounds and for the reasons summarized herein, and pursuant to the authority of UTAH CODE ANN. §73-5-1 and other authorities cited above, the Respondent is hereby ordered to comply with the following requirements:

1. The Respondent is hereby **ORDERED TO CEASE THE USE OF WATER** associated with the Distribution Account listed above and as described in the water rights listed above. UTAH CODE ANN. Subsection 73-5-1(3)(c)(ii).
2. This ORDER shall remain in effect as long as the delinquency on the captioned Distribution Account remains unpaid.
3. Payment of the unpaid balance shall be made in the form of a check payable to "Utah State Engineer" delivered to the address below:

Utah State Engineer  
1594 West North Temple  
PO Box 146300  
Salt Lake City, UT 84114-6300

4. The enclosed assessment notice must be submitted with the payment and the Distribution Account number shown in the caption of this notice must be written on the check.
5. Before attempting to take any water under the captioned Distribution Account, the Respondent shall advise the Water Commissioner of having complied with this Order; the Water Commissioner shall confirm compliance with this Order before any water is distributed under the captioned Distribution Account. The Water Commissioner's contact information is:

*John Swasey*  
435 781-5327 or 435 822-5105  
*jswasey@ubtanet.com*  
HC 64 Box 145  
Duchesne, UT 84021

### IV. ADDITIONAL AGENCY ACTION

1. If there is a violation of this Order, as defined herein, the Division may commence an enforcement action in accordance with UTAH CODE ANN. § 73-2-25.
2. If determined to be in violation of this Order, the Respondent will be subject to administrative penalties in accordance with UTAH CODE ANN. § 73-2-26, including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations, and for replacement

of up to 200% of water taken in violation of the Order. In addition, the Respondent may be liable for reimbursement of all expenses incurred by the Division in investigating and stopping the violation.

#### **V. RESPONDENT PARTICIPATION**

1. To participate in this proceeding, the Respondent must comply with each and all of the requirements listed in Section III. ORDER, herein, *or*:
2. Submit *written* information and evidence documenting that the Respondent named is not the party owning the captioned water right and responsible for payment of the amount due on the referenced Distribution Account.
  - a. The *written* information must provide facts supporting the Respondent's allegations or defenses and must identify the party to whom water right ownership and Distribution Account responsibility was transferred; and
  - b. Must be received by the Division **within fourteen (14) days of the date of this Order.**

#### **VI. RESPONDENT FILINGS**

All Respondent's filings concerning this action, whether to comply with the Order or to provide information and evidence, shall be directed to the Division. Such filings shall reference the SEAA number noted herein and may be submitted in either of two ways:

1. Filings submitted *only* by mail must be ***received*** in the office of the State Engineer by the designated due date. All filings submitted by mail should be directed to:

Division of Water Rights  
Attn: Mike Silva  
1594 West North Temple St, Suite 220  
PO Box 146300  
Salt Lake City, UT 84114-6300

2. Filings submitted by telephone facsimile transmission (fax) must be addressed as for mailing and must be ***received*** in the office of the State Engineer by the designated due date by transmission to: **(801) 538-7467**.

The receiving fax machine will imprint a time/date stamp on the received document, but no confirmation of receipt will be provided to the sender. **The signed original documents must also be submitted to the Division by regular mail using the address information above. The signed original documents must be *postmarked* no later than the designated due date.**

**VII. FURTHER INFORMATION**

Questions concerning this ORDER should be referred to:

*Mike Silva*  
801 538-7430  
mikesilva@utah.gov  
PO Box 146300  
Salt Lake City, UT 84114-6300

Dated this 15 day of December 2009

*Mike Silva*

*Mike Silva*  
Distribution Engineer

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 15th day of December, 2009, I mailed a copy of the foregoing Order by U.S. Priority Mail Service, Delivery Confirmation requested, to the following:

Leon Nielsen  
PO Box 92  
Myton, UT 84052-0092

*Jesse Nelson*

Jesse Nelson  
Division of Water Rights  
Field Services Secretary

**U.S. Postal Service™ Delivery Confirmation™ Receipt**

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)  
*Leon Nielsen*  
(Please Print Clearly)  
*PO Box 92*  
*Myton, UT 84052-0092*

DELIVERY CONFIRMATION NUMBER: 03E0 2040 0001 6219 9148

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PS Form 152, May 2002 (See Reverse)

**SCANNED**