



JON M. HUNTSMAN, JR.
Governor

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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

STATE OF UTAH DIVISION OF WATER RIGHTS	
DIVISION OF WATER RIGHTS, JERRY D. OLDS STATE ENGINEER, Claimant v. JAY ABBOT Respondent	ORDER TO CEASE USE OF WATER SEAA NO. 1218 Water Rights 43-198 and 43-9213

This ORDER TO CEASE USE OF WATER is issued pursuant to UTAH CODE ANN. 73-5-4 (5) which states:

(5) 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:

- (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.*

A lawful DISTRIBUTION ORDER (SEAA NO. 1218) was issued to Respondent on July 5, 2007. That Distribution Order allowed the Respondent 30 days from the date of the Order to install at the Mecham Ditch Diversion, and at the Respondent's re-diversion from Rocky Point Canal, measuring devices of a type and in a location approved by the Water Commissioner and control works that will provide for adequate regulation and that can be locked by the Water Commissioner.¹

The Respondent was further allowed seven (7) days from the date of the Order to submit to the Water Commissioner a written schedule for the remainder of the irrigation season indicating what portion of the Respondent's water will be taken through each of the points of diversion and at what times. *The requirement to provide the Water Commissioner with an annual written delivery schedule prior to any water delivery will remain in effect for all years from this date forward.*

¹ The Distribution Order also referenced a pump located directly on the Duchesne River. It has since been determined that the pump diversion is not being used.



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Having determined that compliance with the Distribution Order has not been achieved in the time allowed, the State Engineer hereby issues this **Order to Cease Use of Water applicable to the water delivered under the Respondent's water rights by both the Rocky Point Canal and Mecham Ditch. This Order will remain in effect until compliance with the Distribution Order of July 5, 2007, is achieved.** Compliance will be determined by the Water Commissioner's verification that the control works at both locations allow for adequate flow regulation and are lockable and that each location has an acceptable measuring device. The type and location of these improvements must be approved by the Water Commissioner *prior* to their installation.

By authority of this Order, the Water Commissioner will close the Respondent's diversions and restrict water use from occurring until the Respondent has accomplished the necessary improvements. The Respondent is advised that any adjustment to the diversion controls without the approval of the Water Commissioner will constitute a violation of this Order and will make the Respondent subject to enforcement actions, which may include the assessment of administrative fines and penalties. Fines may be assessed in amounts up to \$1,000 per day for unknowing violations and \$5,000 per day for knowing violations, each day constituting a separate violation subject to assessment of fines. In addition, the Respondent may be required to replace up to 200% of the water taken in violation of this Order and to reimburse the Division of Water Rights for all costs associated with investigating and stopping the violation. UTAH CODE ANN. 73-2-26

The Respondent's Water Commissioner is John Swasey; he can be reached by telephone at (435) 822-5105.

Dated this 21st day of August, 2007:



Lee H. Sim, P.E.
Assistant State Engineer

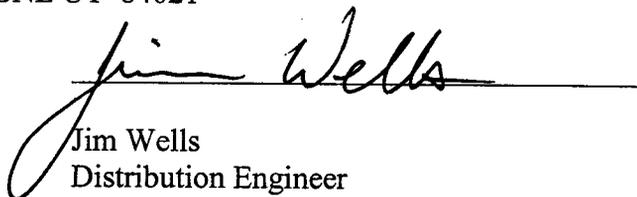
Pc: Bob Leake, P.E. / Regional Engineer
John Swasey/ Distribution Commissioner
Kerry Carpenter / Enforcement Engineer
Rocky Point Canal c/o Clinton Moon HC 64 POB 113 Duchesne, UT 84021
File: SEAA 1218

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 22nd day of August, 2007, I mailed the foregoing Order to Cease Use of Water by regular U.S. Mail, to the following:

JAY ABBOTT
PO BOX 75
DUCHESNE UT 84021


Jim Wells
Distribution Engineer