

BEFORE THE DIVISION OF WATER RIGHTS

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| <p>In The Matter Of:</p> <p><b>Gino Foianini</b></p> <p><b>RESPONDENT</b></p> | <p><b>MEASURING DEVICE<br/>AND CONTROL STRUCTURE<br/>NOTICE</b></p> <p>SEAA No. 1416</p> <p>DISTRIBUTION ACCOUNTS: 102864</p> <p>WATER RIGHTS: 41-3481</p> |
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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, ... 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:*

*(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 Utah State Engineer has previously issues State Engineer Agency Actions numbered 1330, 1393, 1404, and 1413 related to measuring devices and control structures on the Middle Fork of Beaver Creek that divert and regulate water into the Gregory Basin Canal.
2. This Notice supercedes SEAA No.s <sup>1330</sup>1303, 1404, and 1413
3. SEAA No. 1393, Gino Foianini and Hanks Family Ranch Limited Partnership, Respondents, requires the reconstruction of the control structure on the Middle Fork of

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TO SEAA 1416

- Beaver Creek at the head of the Gregory Basin Canal and will remain in force. The SEAA No. 1393 requires the work be completed by April 15, 2011.
4. The Respondent shares use of the Gregory Basin Canal with water users who receive water released from Hoops Lake Reservoir.
  5. The Respondent diverts water from the Middle Fork of Beaver Creek into the Gregory Basin Canal under Utah Water Right Number 41-3481.
  6. The Hoop Lake water users have informed the Utah State Engineer that, prior to May 15, 2011, they will construct, at a point downstream of the diversion on Middle Fork, a separate ditch to carry the water released from Hoop Lake for their use.
  7. The Hoop Lake water users have also informed the Utah State Engineer that they will construct a splitter structure at the point where their ditch leaves the Gregory Basin Canal to divide their water from the Respondent's water.
  8. Further the Hoop Lake water users will install a headgate and measuring device at the splitter structure to control and measure the Hoop Lake flows that will be diverted into their ditch.

### III. ACTIONS REQUIRED

1. The Respondent is hereby notified he must install a headgate and measuring device at the splitter structure constructed by the Hoop Lake water users to control and regulate the water, diverted according to his water rights, that will remain in the Gregory Basin Canal for his use.
2. The headgate must be of a quality and function equal to a Waterman, screw-type headgate and must be approved by the Utah State Engineer prior to installation.
3. The measuring device must be of an adequate size to properly measure the flows that will pass through it. The measuring device currently at the diversion from Middle Fork Beaver Creek is not large enough to adequately measure the flows that may be diverted to the Respondent at the splitter structure during the high runoff period. The measuring device must be approved by the Utah State Engineer prior to installation.
4. The measuring device currently at the diversion from Middle Fork Beaver Creek must remain in place. Although not large enough to accurately measure flows during high runoff, it is needed by the water commissioner and is large enough to be used when a call has been made for regulation and the diversions are being reduced.
5. This control structure and measuring device to be constructed at the splitter structure will eliminate the need for the individual headgates required by SEAA No. 1330 and for improvements to the measuring device at the diversion from Middle Fork Beaver Creek required by SEAA Nos. 1404 and 1413. SEAA Nos. 1330, 1404 and 1413 are superceded by this Notice.
6. **The Respondent must install the headgate and measuring device prior to diverting water for his use at the splitter structure.**

#### IV. ADDITIONAL AGENCY ACTION

1. The Respondent is 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 will issue an Order forbidding the use of water until the Respondent has complied.
3. If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation an Order, the Respondent may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005). In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation.

#### V. FURTHER INFORMATION

If the Respondent has any questions concerning this Notice, state laws and rules, or the required and recommended action, please discuss them with:

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*Vernal Office/Eastern Region*  
*Utah Division of Water Rights*  
*(435) 781-5327*  
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*152 E 100 N*  
*Vernal, UT 84078-2126*

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*P.O. Box 166300*  
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Dated this 7th day of April, 2011



Lee H. Sim, P.E.

Assistant State Engineer for Field Services

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