

Little Bear River



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

KENT L. JONES
State Engineer/Division Director

STATE OF UTAH

DIVISION OF WATER RIGHTS

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:*
 - (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.*



July 1, 2009

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II. STATEMENT OF FACTS

1. The Respondent is the water user under the captioned distribution account and owner of the captioned water rights. Water under said rights is distributed to the Respondent through the outlet works of Hyrum Dam on the Little Bear River. Water diverted into the Wellsville East Field Canal is the diversion being addressed in this Notice. The point of diversion of the canal is located in the NE corner of Section 07, T10N, R1E, SLB&M.
2. Greg Hansen, water commissioner, has indicated that the measurement device on the canal is inoperable. In order for the Commissioner to properly administer the delivery of water to the Respondent, the conditions of the Respondent's facilities require corrective action.

III. ACTIONS REQUIRED

1. The Respondent is hereby notified that the Respondent's facilities, Wellsville East Field Canal, **must be equipped with functional and accurate measuring device that is compatible with the telemetry system used in the Little Bear River Distribution System.** This must be done in a manner that will provide the Commissioner an ability to fully regulate the diversion of water.
2. Prior to commencing the required work and during the construction and repairs, the Respondent shall consult with the Commissioner to assure that the planned improvements will satisfy the requirements of this Notice.
3. The area surrounding the Respondent's facilities is to be made sufficiently clear of vegetation to allow reasonable access by the Commissioner. If access to the facilities is restricted by locked gates the Commissioner must be provided keys.
4. The Respondent's 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, 2010.**

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 may issue an Order forbidding the use of water under the above captioned water rights until the

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Respondent has 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 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 of an Order, the Respondent 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 Will Atkin, Regional Engineer, by phone at 435-752-8755 ext.21 or by e-mail at WillAtkin@Utah.gov. Greg Hansen, Water Commissioner, may be contacted by phone at 435-723-3491.

Dated this 1st day of July, 2009



Vance Twitchell
Distribution Engineer

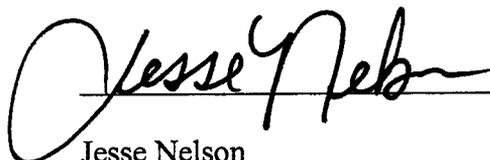
cc: Will Atkin, Regional Engineer
Greg Hansen, Water Commissioner

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CERTIFICATE OF MAILING

I, the undersigned, certify that on this 1st day of July, 2009, I mailed a copy of the foregoing Notice by certified U.S. Mail to the following:

**WELLSVILLE NEW EAST FIELD IRRIGATION CO. INC.
DUANE HALL, PRESIDENT
3100 WEST 3500 SOUTH
WELLSVILLE, UT 84339**

A handwritten signature in cursive script that reads "Jesse Nelson". The signature is written in black ink and is positioned above a horizontal line.

Jesse Nelson
Division of Water Rights
Field Services Secretary