

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>Barbara Gene Miner Family Trust Barbara Gene and Dixon Jed Miner, Trustees PO Box 151 Fairview, UT 84629</p> <p>RESPONDENT</p>	<p>CONTROL STRUCTURE AND MEASURING DEVICE NOTICE</p> <p>SEAA No. 1398</p> <p>WATER RIGHTS: 65-3067, (a34790)</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, 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.*

(4) A person using water as an instream flow:

(a) shall install and maintain a measuring device or stream gauging station in the section of the stream within which the instream flow is maintained; and

(b) is not required to install controlling works unless the state engineer's order approving the application requires the installation because controlling works are necessary to achieve the purpose of the application.

(5) (a) An owner or manager of a reservoir shall construct and maintain a measuring device as directed by the state engineer to measure the inflow, storage content, and outflow from the reservoir.

(b) The state engineer shall approve the design and location of the measuring device.

(c) The owner or manager of a reservoir shall make the measuring device accessible to the state engineer or water commissioner.

(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 Respondent is the water user and owner of the captioned water rights. Water under said rights is distributed to the Respondent through a "historical drain" as named in the Order of the State Engineer, Permanent Change Application under the captioned water rights.
2. River Commissioner Randy Allred requires reasonable access and to coordinate control of the headgate(s) at this diversion. An adequate locking control device needs to be demonstrated by the owner, for regulation, if necessary.
3. In addition, Commissioner Allred needs access to an adequate measuring device(s) to be installed from the "historical drain" that feeds the ponds, along with continued reasonable access for observation of the measuring devices to make readings and records of such diversions.
4. In order for the Commissioner to properly administer the delivery of water to the Respondent, the condition of the Respondent's facilities require corrective action.

III. ACTIONS REQUIRED

5. The Respondent is hereby notified that the Respondent's facilities and diversion of water must be coordinated the Commissioner to show an ability to control the diversion into and release of water from the ponds. This should also provide the ability to securely lock these control devices to prevent tampering.
6. In addition, a measuring device(s) should be installed at one or more locations as necessary to monitor the flow from the "historical drain" in such a manner that provides for accurate readings.
7. Although not required at this time, monitoring of outflow from the ponds, may be required in the future, to insure the diversions operate within the defined limits established by and in accordance with the captioned water right and associated changes.
8. The Respondent's facilities are to be perpetually maintained in good working order as described above.
9. Prior to commencing the required work, the Respondent should consult with the Commissioner to assure that the planned improvements will satisfy the requirements of this Notice.
10. The required work must be completed and the Commissioner notified of said completion within 60 days of the date of this Notice, no later than September 28, 2010.

IV. ADDITIONAL AGENCY ACTION

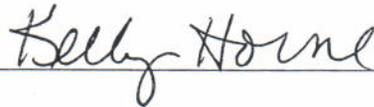
11. The Respondent is encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.
12. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondent has complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).

13. 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).
14. 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), 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.”

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 28th day of July, 2010, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

Barbara Gene Miner Family Trust
Barbara Gene and Dixon Jed Miner, Trustees
PO Box 151
Fairview, UT 84629



Kelly Horne
Division of Water Rights
Field Services Secretary