

Upper Bear

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>Randolph and Woodruff Canal Co.</p> <p>RESPONDENT</p>	<p>CONTROL STRUCTURE AND MEASURING DEVICE NOTICE</p> <p>RE: SEAA No. 1190 DISTRIBUTION ACCOUNT: 102352 WATER RIGHT: 23-2</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 Respondent is the owner of the Randolph and Woodruff Canal in which water is diverted from the Upper Bear River near Woodruff, Utah.

SCANNED

2. A notice was issued to the Respondent on March 8, 2007, to install a measuring device that will measure the water diverted into the Randolph and Woodruff Canal.
3. The Respondent installed a 36-ft wide ramp flume in the fall of 2007 that was ready for operation in 2008. This flume was installed with a 2-ft high steel ramp that was later removed from the flume by the Respondent in order for the Respondent to increase the flow to the canal. The flume location is near N 1060 ft W 160 from the E4 corner of Section 15 T 9N & R 7E SLb&m.
4. Removing the ramp from the flume reduced the functionality and accuracy of the flow measurement.
5. The flume is not fully completed and operational without a suitable ramp installed and calibrated/rated to provide accurate realtime flow data to the commissioner.
6. Water is diverted from the Bear River at a location of about 0.87 miles East of the flume. Excess water diverted is spilled back to the river at a structure located on the right bank of the canal a short distance upstream from the flume location.
7. The Respondent is also the owner of the river diversion and bypass structure that control the flow diverted into the canal. According to commissioner Ronald Hoffman there are times when there is excessive flow in the canal that must remain in the river during high flows instead of being diverted and spilled back to the river at the flume location. The diversion point on the natural channel must be modified or altered as needed to reduce excessive diversions of natural flow into the canal.

III. ACTIONS REQUIRED

1. The Respondent must complete the installation and maintain a functioning measuring device to measure the water diverted into the Randolph and Woodruff Canal.
2. Diversions into the canal need control improvements. The water commissioner recommends that rip-rap material (approx 8-10 10-yd dump truck loads) be strategically positioned at the Bear River diversion location so that the flow of the river will be evenly divided between the canal and the river, thus preventing the need to spill large flows back to the river downstream. The Respondent may choose to implement this suggested improvement and/or retain professional consultants to address this issue using other approved methods. Any activities that affect the streambed or stream banks of the Bear River must have prior stream alteration approvals and/or permits. (Stream alteration permits are available via the Division of Water Rights and information relating to applications for permits are available on waterrights.utah.gov website.)
3. There is a need to improve or maintain the control structure that controls the flow of water returning to the river at the flume location. This must be designed to enable the commissioner to better control the water diverted into the canal without difficulty and/or safety concerns. The bridge across the canal flume provides the commissioner with access to this control structure and must be equipped with side handrails to provide safe access. The Respondent may select either a manual or automated gate structure to control the flow but the use of stop logs are discouraged and should only be required to be used by the commissioner in emergency situations.
4. The ramp flume needs to be fitted with a ramp that will enable an accurate and acceptable flow measurement. The ramp must be of such design that will enable an accurate water

measurement calibration and such calibration should be verified periodically with field measurements. The commissioner recommends that a 1-ft high ramp be installed, which seems to be a reasonable compromise between the flow measurement and flow restriction criteria.

5. The Respondent's facilities must be repaired or replaced in a manner that will provide the Commissioner an ability to fully control the diversion of water and to securely lock the gate position.
6. The Respondent's facilities are to be perpetually maintained in good working order as described above.
7. Prior to commencing the required work and during the construction and repairs, the Respondent shall consult with the Commissioner and this office as necessary to assure that the planned improvements will satisfy the requirements of this Notice.
8. The required work must be completed and the Commissioner notified of said completion no later than May 15, 2009.

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 until the 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."

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:

Will Atkin
Regional Engineer/Logan Office
Utah Division of Water Rights
(435) 752-8755

Ben Anderson
Water Rights Distribution Engineer
Utah Division of Water Rights
(801) 538-7469
1594 W North Temple Ste 220
P.O. Box 166300
Salt Lake City, UT 84104-6300

Dated this 15th day of January, 2009

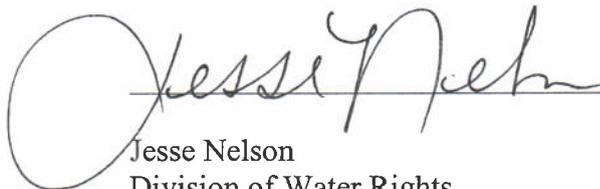


Ben L. Anderson, P.E.
Water Rights Distribution Engineer

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 15th day of January, 2009, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

Randolph and Woodruff Canal Co.
Ken Brown, President
PO Box 21
Randolph, UT 84064



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)
Randolph and Woodruff Canal Co.
(Please Print Clearly)

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