



GARY R. HERBERT
Governor

SPENCER J. COX
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

Floyd & Calvin Yardley
PO Box 107
Beaver, UT 84713

August 5, 2014

RE: SEAA 1110, Morris Levi Diversion, between Patterson Dam and Barton Ditch

TO: Floyd & Calvin

Attached is a State Engineer Agency Action to cease use of water, and formalizing the requirement to fully remove from service the Morris Levi Ditch Diversion. The current small pile of gravel is insufficient to prevent water from entering the ditch. This will involve backfilling the ditch quite some distance from the river so no high water or sub water can enter the ditch, regardless if flow is apparent or not. Any free standing water will be considered part of the groundwater and cannot be diverted for use. This notice to cease use of water has been issued and will remain in effect until proper water rights are associated with this ditch.

Thank you for your cooperation in attending to this matter in a timely manner, since we are in the middle of the irrigation season I have provided a short 10 day notice for response and compliance.

After reviewing the attached State Engineer's Agency Action, If you have any questions concerning this notice, please contact the Water Commissioner: Steven Gale to discuss your remedy and follow up inspection. You may also contact Mike Silva, Distribution Engineer by phone at (801) 538-7430 or by email at MikeSilva@Utah.Gov.

Sincerely,

Mike Silva
Distribution Engineer

cc: Kurt Vest, Regional Engineer
Steven Gale, Beaver River Commissioner
Distribution File: Beaver River
SEAA 1110, Correspondence file



BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p style="text-align: center;">Floyd & Calvin Yardley {& Others} Involved with: Re-establishment of the Morris-Levi Ditch</p> <p style="text-align: center;">RESPONDENTS</p>	<p style="text-align: center;">ORDER FORBIDDING USE OF WATER</p> <p style="text-align: center;">SEAA No. 1110 DISTRIBUTION ACCOUNT NO. 100047 WATER RIGHTS: (none)</p>
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I. STATEMENT OF LAW AND JURISDICTION

1. The Division of Water Rights (“Division”) issues this Order Forbidding Use of Water (“Order”) under UTAH CODE ANN. § 73-5-4. This Order is exempt from the Utah Administrative Procedures Act in accord with UTAH CODE ANN. Subsection 63G-4-102(2).
2. The State Engineer, as the director of the Division, is charged with the general administrative responsibility over the waters of the State. UTAH CODE ANN. § 73-2-1.
3. The Division administers the waters of the state under the direction of the State Engineer. UTAH CODE ANN. §§ 73-2-1 and 73-2-1.1.
4. The State Engineer is authorized to enact rules governing water distribution systems, water commissioners, water measurement and reporting that are consistent with UTAH CODE ANN. Chapter 73-5, “Administration and Distribution.” UTAH CODE ANN. § 73-2-1(5)(a) and 73-2-1(5)(b).
5. “Distribution Order” means an Order of the State Engineer interpreting the water rights included within a Distribution System, confirming priorities of water rights, giving instruction or direction regarding the regulation, distribution, and/or measurement of water based on those water rights, and may order the installation or repair of measuring devices, head gates, and control structures as authorized by UTAH CODE ANN. Chapter 73-5. Distribution Orders are enforceable under the provisions of UTAH CODE ANN. §§ 73-2-25 and 73-2-26. UTAH ADMIN. CODE R. 655-15-4 (e).
6. “Enforcement Tag” means an orange tag attached by a water commissioner to or near a control structure or water measuring device in situations where the water user is ordered

to comply with the water commissioner's regulation and distribution of water. An enforcement tag constitutes a distribution order and is enforceable in the same manner. UTAH ADMIN. CODE R. 655-15-4 (j).

7. "Point(s) of Diversion" means that location or locations where water is delivered and regulated to the water user in the Distribution System; which point(s) is associated with a Distribution Account. The Distribution Account holder of record is deemed to be the current water user at the Point(s) of Diversion.
8. "Respondent" means any person to whom the Division issues a Notice or Order pursuant to authority granted under UTAH CODE ANN. Chapter 73-5.
9. "Violation," as used in this Order, means any action taken by the Respondent, the Respondent's agent, or any person acting under the direction or authority of the Respondent, intended to circumvent or avoid the restrictions on water use ordered herein.
10. UTAH CODE ANN. § 73-5-4 (6) states in part: *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..*
11. This Order constitutes a Distribution Order in accord with the provisions of UTAH ADMIN. CODE R655-15-4.
12. UTAH CODE ANN. § 73-2-25 states, in part: *The state engineer may commence an enforcement action under this section if the state engineer finds that a person violates a written distribution order from the state engineer.*

II. STATEMENT OF FACTS

1. The Respondent(s) have one or more Distribution Accounts on the Beaver River.
2. On March 24, 2006 a Measuring Device Notice ("Notice") was mailed to the Respondent at the address of record.
3. The Notice recited certain facts pertaining to the measuring device at the Point of Diversion, which facts are herewith incorporated into this Order.
4. The Notice directed the Respondent to correct certain deficiencies associated with the facilities used to divert and/or measure water at the Point(s) of Diversion within 30 days

of the date of the Notice.

5. The Notice informed the Respondent that if the required deficiencies were not corrected within the time allowed, the Division would issue an Order Forbidding the Use of Water until the corrections were made.
6. Since near that time in 2006, it was indicated that the diversion would not be reused, and water rights associated with the Morris Levi Diversion had been transferred to other ditches. As later provided in explanatory Letter of June 30, 2014.
7. A downstream water user reported in early June 2014 that the diversion had been re-established by digging or extending trench to reach and cut across the Beaver River to access and divert water, at or near the former diversion point for the Morris-Levi ditch, defined as along the Beaver River between the Patterson Dam and Barton Ditch.
8. No control structure or measuring device was installed at this time the diversion was reestablished and no notice was provided to the Water Commissioner. It was reported by more than one water user in the area (in June & July 2014) that the diversion had been actively diverting water since the start of the irrigation season in 2014.
9. An inspection of the diversion by the Water Commissioner in June 2014 indicated water was being diverted without any control/ water measurement facilities in place at the Point of Diversion. The water commissioner instructed the respondent to discontinue use of the diversion, and was instructed to use means to block the ditch and discontinue use of the water.
10. Further investigation by staff of the State Engineer's office determined that all remaining water rights were moved to other ditches in the area. A follow up letter was sent June 30, 2014, detailing the current status of water rights that were moved. This letter indicated there were no remaining water rights to associate with the subject diversion to allow any diversion of any water at this point.
11. A follow up inspection was conducted on July 17, 2014, by representatives from the Division of Water Rights. Observed was a small gravel pile between the river and diversion point to the ditch. A small amount of water was observed in the ditch to still be flowing through the gravel pile. The gravel pile, currently in place was intended to block the flow of water. This method is deemed inadequate for preventing ALL water flow in the ditch. During a large flow event, the gravel would easily wash out, thus providing water into the ditch where no water rights currently exist.
12. As directed in the explanatory letter dated June 30, 2014, there should be no live water or sub water standing or flowing in the ditch. As of the date of this Order, the Respondent

has not provided adequate measures to sufficiently prevent diversion where no water rights exist.

III. ORDER

On the grounds and for the reasons summarized herein, and pursuant to the authority of UTAH CODE ANN. §73-5-4, the Respondent is hereby ordered to comply with the following requirements:

1. The Respondent is hereby **ORDERED TO CEASE THE USE OF WATER** at the Point of Diversion as described in this Notice and as described above. There are no remaining water rights associated with the Morris Levi diversion as described. UTAH CODE ANN. Subsections 73-5-4(5)(a) and 73-5-9(3).
2. This ORDER shall remain in effect indefinitely until water rights have been re-established and adequate control and/or measurement device are installed at the Point of Diversion..
4. The Respondent shall advise the Water Commissioner of having complied with the requirements of the Notice, by refilling the ditch as described below
5. The respondent is required to fill in the ditch for a minimum of 300 feet (or more) to adequately stop any water from potentially entering the ditch and prevent both sub water and surface water from flowing into and subbing under for all low and high river flow conditions.
6. The required distance will be determined in the field by the Water Commissioner or staff from the Division of Water Rights Division. The back filling should start at the diversion point on the river and extend south and west along the ditch line. Backfilling should be adequate to prevent gathering of ground water or standing water in the ditch and at a sufficient distance that would prevent flash floods or high flows from entering at any point on the ditch.
7. The Water Commissioner shall confirm satisfactory compliance with this Notice. A follow up inspection will be conducted by Division of Water Rights Staff.

IV. ADDITIONAL AGENCY ACTION

1. If there is a violation of this Order, as defined herein, the Division may commence an enforcement action in accordance with UTAH CODE ANN. § 73-2-25.
2. If determined to be in violation of this Order, the Respondent will be subject to administrative penalties in accordance with UTAH CODE ANN. § 73-2-26 and for

replacement of water taken in violation of the Order. In addition, the Respondent may be liable for reimbursement of all expenses incurred by the Division in investigating and stopping the violation.

V. RESPONDENT PARTICIPATION

1. To participate in this proceeding, you must comply with each and all of the requirements listed in Section III, ORDER, herein, *or*:
2. Submit *written* information and evidence documenting that the Respondent named is not the party responsible for the work conducted to date in trying to access water through this diversion point.
 - a. The *written* information must provide facts supporting the Respondent's allegations or defenses and must identify the party to whom responsibility it was or assigned or transferred to; and
 - b. Must be received by the Division **within fourteen (14) days of the date of this Order.**

VI. RESPONDENT FILINGS

All Respondent's filings concerning this action, whether to document compliance with the Order or to provide information and evidence, shall be directed to the Division. Such filings shall reference the SEAA number noted herein and may be submitted in either of two ways:

1. Filings submitted *only* by mail must be ***received*** in the office of the State Engineer by the designated due date. All filings submitted by mail should be directed to:

Division of Water Rights
Attn: Mike Silva
1594 West North Temple St, Suite 220
PO Box 146300
Salt Lake City, UT 84114-6300

2. Filings submitted by telephone facsimile transmission (fax) must be addressed as for mailing and must be ***received*** in the office of the State Engineer by the designated due date by transmission to: **(801) 538-7467**.

The receiving fax machine will imprint a time/date stamp on the received document, but no confirmation of receipt will be provided to the sender. **The signed original documents must also be submitted to the Division by regular mail using the address**

information above. The signed original documents must be *postmarked* no later than the designated due date.

VII. FURTHER INFORMATION

Questions concerning this ORDER should be referred to:

Mike Silva
(801) 538-7430
mikesilva@utah.gov
PO Box 146300, Slat Lake City, UT 84114

Dated this 5 day of August, 2014

Mike Silva

Mike Silva
Distribution Engineer
Division of Water Rights

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 5th day of August, 2014, I mailed a copy of the foregoing Order by U.S. Priority Mail Service, Delivery Confirmation requested, to the following:

Floyd and Calvin Yardley
PO Box 107
Beaver, UT 84713

Kelly K. Horne

Kelly Horne,
Field Services Secretary
Division of Water Rights

USPS TRACKING # **9114 9011 2308 6069 1221 93**
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or call 1-800-222-1811.