



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

Alexus XI c/o David Van Dyke
PO Box 17
Teasdale, UT 84773

April 5, 2016

RE: SEAA 1503

TO: Alexis XI

The Lower Fremont Water Commissioner: Randy Bradbury has notified my office that your irrigation practice involving gates and turnouts and pressure system does not have a functioning measuring device, as required by State Laws governing the use and regulation of water. In order to properly measure and apportion this water, a reliable and functioning measuring device is required on each location out where water is taken. The headgate and measuring device is a state statute requirement and is the responsibility of the water users to fulfill as a basic condition and use of their respective of water rights.

The current enforcement, State Engineer's Agency Action (SEAA) has been in place since July of 2014, and the basic requirement to provide a functioning measuring device has not been rectified by the water user(s). The Division of Water Rights (Division) worked with the water commissioner to explore possible remedies. During 2015, a watering plan was requested and not provided. Further on-site meetings defined a watering plan that you later provided. However during the Water Commissioner's field observation and inspection the water plan was not followed. On numerous occasions, there were significantly more sprinklers in use in a field than was specified. The counting and use of a sprinkler head count is far too time consuming for to be practically applied. As suggested, at the end of last season, a reliable and calibrated metering system is installed by the water user. The Division had access to suitable equipment; however there may be lower cost alternatives for other meters for your system. At this point in time, the Division will no longer provide any further assistance towards installation of a meter, since this will only impede installation of a suitable measuring device to meet the state law requirement, to be fulfilled by the water user. The Division recommends that an outside vendor be contacted to provide that service. The division and staff cannot make any recommendations or endorsements for a provider and suggests contact with a local irrigation specialist or the NRCS to assist the water user to rectify the lack of a measuring device.

Typically this office will allow for up to 30 days for a remedy to be in place before diversions may continue however fulfilling this requirement has been long overdue nearly to two years. Due to a lack of a functioning measuring device the Water Commissioner has been instructed to close and lock your gates until a diversion measurement device has been installed. To satisfy the requirements of this SEAA, a functioning measuring device must be installed. Until such time, your gate will remain closed and locked. **Attached is: ORDER FORBIDDING USE OF WATER, which will remain in force until the requirement for a functioning measuring device has been met. Until that time the subject diversion(s) will remain locked and out of service.**

If you have any questions concerning this notice, please contact the Water Commissioner: Randy Bradbury at (435) 633-5897, after your installation is complete and to schedule a follow up inspection. If you have further questions, contact Mike Silva, Distribution Engineer by phone at (801) 538-7430 or by email at MikeSilva@Utah.Gov.

Sincerely, 

Mike Silva
Distribution Engineer

cc: Kirk Forbush, Regional Engineer
Randy Bradbury, Lower Fremont River Commissioner
Distribution File: Lower Fremont River & SEAA 1503 Correspondence file



BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>ALEXUS XI, c/o DAVID VAN DYKE</p> <p>RESPONDENTS</p>	<p style="text-align: center;">ORDER FORBIDDING USE OF WATER</p> <p style="text-align: center;">SEAA No. 1503 DISTRIBUTION ACCOUNT NOs.: 100751, 100753 WATER RIGHTS: 95-4682, 95-4688, 95-4689, 95-531</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. Such action may include but is not limited to removal or alteration of an Enforcement Tag placed by a duly appointed official of the Division.
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 is the Distribution Account holder.
2. On July 23, 2014 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 / control structure] at the Point(s) 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 10 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. An inspection of the control/ water measurement facilities at the Point(s) of Diversion was conducted on April 1, 2016.
7. As of the date of this Order, the Respondent has not corrected the deficiencies associated with the facilities used to divert and/or measure water at the Point(s) of Diversion as directed in the Notice.

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(s) of Diversion as described in the Notice and as described in the water rights listed above. UTAH CODE ANN. Subsections 73-5-4(5)(a) and 73-5-9(3).
2. This ORDER shall remain in effect until the deficiencies in the control and/or measurement devices at the Point(s) of Diversion as described in the Notice have been resolved.
4. Before attempting to take any water at the Point(s) of Diversion, the Respondent shall advise the Water Commissioner of having complied with the requirements of the Notice.
5. The Water Commissioner shall confirm satisfactory compliance with the Notice before any water is distributed at the Point(s) of Diversion described in the Notice.

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 neither the party owning the captioned water right nor the holder of the referenced Distribution Account.
 - a. The *written* information must provide facts supporting the Respondent's allegations or defenses and must identify the party to whom water right ownership and Distribution Account responsibility was transferred; 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
Salt Lake City, UT 84114

Dated this 5th day of April 2016

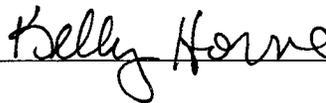


Mike Silva
Distribution Engineer

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 5th day of April 2016, I mailed a copy of the foregoing Order by U.S. Priority Mail Service, Delivery Confirmation requested, to the following:

ALEXUS XI c/o DAVID VAN DYKE
PO BOX 17
TEASEDALE, UT 84773



Kelly Horne
Division of Water Rights
Field Services Secretary

USPS TRACKING # **9114 9999 4423 8701 8651 24**
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or call 1-800-222-1811.