

STATE STREAM ALTERATION PROGRAM

PURPOSE

This fact sheet is intended to be used as an introduction to the State Stream Alteration program. Contained within is a brief history of the program, a description of the procedures for obtaining stream alteration permits, the laws that govern the program, and answers to frequently asked questions to stream alteration personnel. It is the hope of the State Engineer's Office that this information will be useful to prospective applicants in planning their stream alteration projects and to the public-at-large to be better informed of this state program.

HISTORY OF THE PROGRAM

Originally implemented in 1972 by the State Engineer's Office (Utah Division of Water Rights), the State Stream Alteration Program was developed to protect the natural resource value of the state's natural streams, vested water rights, aquatic wildlife, and recreational opportunities associated with natural streams. The original statute that governed the program had minimal regulatory authority, but following the heavy flooding years of 1983 and 1984 the program was modified to, in addition to the objectives listed above, ensure that stream alteration projects did not unreasonably limit flood capacity in natural channels.

Following the revisions to the code in 1985, the U.S. Army Corps of Engineers (Corps) entered into a Joint Permitting Program with the State Engineer's Office. This joint program allowed the State Engineer to issue Section 404 of the Federal Clean Water Act certification for many stream alteration projects throughout the state. The obvious advantage to applicants is that in many cases, only one permit would need to be granted to obtain both federal and state approval.

GOVERNING CODE AND ADMINISTRATIVE RULE

Section 73-3-29 of the Utah Code

Section 73-3-29 of the Utah Code represents the governing statute of the State Stream Alteration Program. The entire text of this chapter and section can be viewed at:

http://le.state.ut.us/~code/TITLE73/htm/73_03032.htm.

Section 73-3-29 sets forth the State Engineer's authority and responsibility to regulate the alteration of natural streams. The most pertinent portion of this section is 73-3-29(1) that reads:

.... a state agency, county, city, corporation, or person may not relocate any natural stream channel or alter the beds and banks of any natural stream without first obtaining the written approval of the state engineer.

Section 73-3-29 also describes procedures for obtaining written authorization by the State Engineer during an emergency flooding situation and the criteria the State Engineer's Office uses to evaluate stream alteration proposals.

Administrative Rule R655-13

Administrative Rule R655-13 was implemented in 2004 and was intended to add clarification to Section 73-3-29 of the Utah Code. Among other

things, R655-13 establishes the State Engineer's permitting jurisdiction, defines a natural stream, and gives requirements for some specific stream alteration activities. Full text of Administrative Rule R655-13 can be found at:

<http://rules.utah.gov/publicat/code/r655/r655-013.htm>.

GP-40

As mentioned above, the State Engineer and the Corps entered into a joint permitting program. The product of that agreement was the Corps' issuance of Regional General Permit 40 (GP-40). For many stream alteration projects, GP-40 allows the State Engineer to issue Section 404 of Clean Water Act certification through the State Stream Alteration Program. Exceptions include projects that involve impacts to wetlands, ponds or lakes, threatened and endangered species. For these types of projects a separate Corps permit is usually required. GP-40 is reevaluated and renewed at the Corps discretion every five years. The current issuance of GP-40 is valid until 2009. Full text of GP-40 can be found at the Corps' Sacramento District Regulatory Branch website at:

<http://spk.usace.army.mil/organizations/cespk-co/regulatory/application.html>.

APPLICATION PROCEDURES

Once it has been determined that authorization from the State Engineer will be necessary prior to beginning your project, you will need to obtain a stream alteration application. Blank application forms are available from the Division of Water Rights website or any of the Division's offices throughout the state. For assistance in filling out the application, see Fact Sheet SA-2. For information on where to obtain applications, see the contact section at the end of this fact sheet.

For almost all projects, plan and cross-sectional drawings of the proposed project as well as a

general location map of where the alteration will occur must also accompany the completed application form. Many projects will require the skills of a qualified hydrologist, geomorphologist, or engineer to ensure the design is appropriate for the channel being altered.

Application Processing

Once your application has been received, it will be reviewed to ensure it is complete. Deficient applications will be returned. Following that, the application is circulated for 20 days to a number of different federal, state, and local agencies and posted on the Division's website for comment. The commenting agencies will review these applications to determine possible impacts to the stream being altered.

Application Evaluation

Following the comment period, Division staff will assemble all comments, conduct further analysis and evaluate your application by the following criteria:

- Will the project unnecessarily or unreasonably affect any recreational use or the natural stream environment?
- Will the project unreasonably or unnecessarily endanger aquatic wildlife?
- Will the project unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows?
- Will the project impair vested water rights?

If the answer to all of these questions is NO, then your application will be approved.

Approved applications generally contain a number of limitations or conditions so the project results in the least amount of negative impact to the stream possible. In most cases, permits are valid for one year from the date of issuance.

VIOLATIONS

Violation of the provisions of Section 73-3-29 can incur significant penalty. So it is extremely important for prospective applicants to obtain authorization prior to initiating work. In 2005, amendments were made to Title 73 of the Utah Code which can result in maximum administrative penalties to violators who knowingly break the provisions of Section 73-3-29 liable for up to \$5,000 per day of violation and criminal penalties punishable as a third degree felony.

Q & A

What follows is a compilation of some of the most frequently asked questions of Stream Alteration Program staff and answers to those questions.

What types of activities require a permit?

The most typical alteration types include new or replacement bridges or culverts, utility line installation, bank stabilization, and other activities adjacent to natural streams. If you are not sure if your project will require a permit, call the stream alteration specialist for your area (see the contacts section at the end of this fact sheet)

What is considered a natural stream?

A natural stream is any natural waterway that receives enough water to develop an ecosystem that differs from the surrounding upland environment. This is most easily determined by observing vegetation changes. Canals, ditches, or other man-made channels are not considered natural streams.

If I'm working near the stream, do I still need to obtain a permit?

Administrative Rule R655-13 requires authorization from the State Engineer if an

activity falls within two times the width of the active channel up to a maximum of 30-feet away from waters edge; if the activity will take place within continuous riparian areas adjacent to the stream; or if the activity will take place in areas of the floodplain that have been observed conducting or storing water during high flow events or show physical evidence of conducting or storing water during high flows.

My permit expired. Can I get my permit reissued?

In most cases yes. Written requests for extension must be submitted to the State Engineer's Office in order to reissue your permit. Requests should include the reason(s) for the delay in implementation of the project. Denials of extension requests may occur if the channel or issues surrounding the channel have changed since the permit was issued.

Where can I get a blank application form?

The easiest place to obtain blank application forms is from the Division of Water Rights website at:

<http://waterrights.utah.gov/strmalt/forms.asp>. If you don't have Internet access, blank applications can be obtained at the Division of Water Rights office or any of the Division's regional offices.

Is there a fee for obtaining permits?

Yes. As of July 1, 2009 application processing fees will be assessed for all received applications. Fees are dependent upon the entity applying for the permit and are broken down as follows:

Non-Commercial applicant...	\$100
Governmental applicant.....	\$500
Commercial applicant.....	\$2000

I need my permit "yesterday". Can my application be processed faster?

Unfortunately the answer is no. Processing of applications requires the application to be circulated for comment for a period of 20 days. This comment period allows for adjacent property owners and governmental agencies to

Salt Lake City, UT 84114

My house is being flooded and I need to alter the stream immediately to prevent damage to my property. Can I do the work without a permit?

Section 73-3-29(2) allows for reasonable steps to mitigate the flood hazard to take place prior to the issuance of a permit. However, if the flood event occurs during normal working hours, Stream Alteration Program staff must be notified immediately. Upon notification, Stream Alteration Program staff may orally approve the action to alleviate or mitigate the flood threat. If the flood threat does not occur during normal working hours, action may be taken to alleviate the threat and Stream Alteration Staff must be notified on the first working day following the threat. Following mitigation of the threat, an application must be submitted to the State Engineer's Office within two working days of the work. Normal application procedures will then apply and additional requirements or mitigation measures may be imposed.

CONTACTS

Two Stream Alteration Program staff are currently employed with the State Engineer's Office.

For projects in the blue area, call:
Daren Rasmussen at (801) 538-7377

For projects in the yellow area, call:
Chuck Williamson at (801) 538-7404

The Division of Water Rights Main office:

1594 West North Temple, Suite220
Phone: (801) 538-7240

The Division has five satellite offices:

Southwestern Region
585 North Main Street
Cedar City, UT 84721
Phone: (435) 586-4231

Northern Region
1780 North Research Parkway, Ste. 104
Logan, UT 84321
Phone: (435) 752-8755

Southeastern Region
453 South Carbon Avenue
Price, UT 84501
Phone: (435) 637-1303

Southern Region
130 North Main Street
Richfield, UT 84701
Phone: (435) 896-4429

Eastern Region
152 East 100 North
Vernal, UT 84078
Phone: (435) 781-5327

For on-line blank applications, program information, and applications currently being circulated; visit the Divisions website at:

