



GARY R. HERBERT  
Governor

GREGORY S. BELL  
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

C/007/001 Incoming

CC: April  
Priscilla  
Daren

&

## ORDER OF THE STATE ENGINEER

FOR STREAM ALTERATION APPLICATION NUMBER 09-91-18SA

Stream Alteration Application No. 09-91-18SA, submitted in the name of the Division of Oil, Gas, & Mining/Dana Dean, applicant, for channel rehabilitation associated with Whiskey Creek, a natural stream located in Carbon County, Utah, has been APPROVED with conditions as set forth in the ORDER below.

This **ORDER** is issued pursuant to statute and in accord with the statutory criteria for approval of a stream alteration application that are described at UTAH CODE ANN. § 73-3-29. The State Engineer has determined that this application does meet the necessary legal criteria to **ORDER** the approval of the application based upon the following information and reasoning set forth in the Facts and Discussion.

### FACTS

1. The application was received by the Division of Water Rights ("Division") on June 25, 2009, and made available for comment on the Division's webpage, provided to adjacent property owners or other individuals who may be affected by this project as identified in the application, pertinent governmental agencies, and to other entities as warranted, for a period of at least 20 calendar days, said period concluding prior to July 15, 2009.
2. The application contains the following information:
  - The stated purpose of the proposed project is: Stabilize an ephemeral channel.
  - The stated description of the proposed project is: Planting vegetation, installing drop structures, widening the channel bottom, and installing revetments and ladder drop structures.
  - The stated alternatives to the proposed project are: No alternatives proposed.
3. The following observations were made by the Division. Based on our review, it has been determined that there does not appear to be any adverse impacts to cultural resources associated with this Stream Alteration.
4. The Division received comments or objections on the proposed project from:
  - State Historical Preservation Office (SHPO), Lori Hunsaker

The comments or objections received by the Division are summarized as follows:

- SHPO concurs with a determination of No Historic Properties Affected.



### DISCUSSION

1. Based on a review of the Division's water rights records and/or a review of the application by personnel of the Division's regional office, it is the opinion of the State Engineer that the project will not impair vested water rights.
2. It is the opinion of the State Engineer that the project will not unreasonably or unnecessarily affect recreational use or the natural stream environment.
3. It is the opinion of the State Engineer that the project will not unreasonably or unnecessarily endanger aquatic wildlife.
4. It is the opinion of the State Engineer that the project will not unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows.

### ORDER

Stream Alteration Application No. 09-91-18SA, submitted in the name of the Division of Oil, Gas, & Mining/Dana Dean, applicant, for channel rehabilitation associated with Whiskey Creek, a natural stream located in Carbon County, Utah, has been APPROVED, contingent upon the conditions outlined in this **ORDER**. This approval also constitutes compliance with Section 404 (e) of the Clean Water Act (33 USC 1344) pursuant to General Permit 040 issued to the State of Utah by the U.S. Army Corp of Engineers on May 14, 2004. The applicant is hereby authorized to conduct the work detailed in the application and supporting documentation, as described in this **ORDER**. Any modification or addition to the work may require additional authorization and/or application resubmittal.

1. The expiration date of this order is **October 31, 2011**. Work affecting the bed and/or banks of the stream may not be conducted after this date. The expiration date may be extended, at the State Engineer's discretion, by submitting a written request outlining the need for the extension and the reasons for the delay in completing the proposed stream alteration.
2. A copy of this order must be kept onsite at any time the work authorized under this order is in progress.
3. Disturbed areas must be planted with a variety of appropriate vegetation (especially woody vegetation where feasible) to help hold the soil around riprap, prevent excessive erosion, and to help maintain other riverine functions. Successful revegetation efforts must be monitored and reported to this office.
4. Best Management Practices should be implemented and maintained during any streamside or instream work to minimize sedimentation, temporary erosion of stream banks, and needless damage or alteration to the streambed.

5. Approval of this application does not authorize trespass, easements, rights-of-way, or any other access and land use permits. It is the responsibility of the applicant to obtain any such authorizations as may be necessary for this proposal.
6. Excavated material and construction debris may not be wasted in any stream channel or placed in flowing waters, this will include material such as grease, oil, joint coating, or any other possible pollutant. Excess materials must be wasted at an upland site well away from any channel. Construction materials, bedding material, excavated material, etc. may not be stockpiled in riparian or channel areas.
7. Whenever an applicant causes the water turbidity in an adjacent surface water to increase 10 NTU's or more, the applicant shall notify the Division of Water Quality.
8. Erosion control, revegetation, and noxious weed control must be implemented and monitored until revegetation becomes well established. Success of these measures must also be reported prior to the compliance inspection. This is especially important for all disturbed areas, including fill, in order to prevent sediments from entering flowing water. Particular attention is required to assure that silt fencing is properly installed and left in place until after revegetation becomes established at which time the silt fence can then be carefully removed.
9. If historical or archaeological resources such as human remains (skeletons), prehistoric arrowheads/spear points, waste flakes from stone tool production, pottery, ancient fire pits, historical building foundations/remains, historical artifacts (glass, ceramic metal, etc.) are found during construction, the permit holder is advised to cease work and contact the Division of State History at 801-533-3555.
10. Machinery must be properly cleaned and fueled offsite prior to construction.
11. Riprap must consist of only clean, properly sized angular rock, which must be keyed deeply into the streambed to prevent undercutting. A filter must be placed behind if necessary (i.e., if soils are fine grained, non-cohesive, and/or erodible). Demolition debris or refuse will not be allowed, nor material such as bricks, concrete, asphaltic material [either natural (tar sand, oil shale, etc.) or man made].
12. Fill materials should be free of fines, waste, pollutants, and noxious weeds/seeds.
13. Within 30 days after the completion of this project, the attached compliance certification form must be completed and returned to the U.S. Army Corps of Engineers. Failure to return this compliance certification form would invalidate U.S. Army Corps of Engineers General Permit 040, thereby placing the applicant in violation of Section 404 of the Clean Water Act.
14. Please submit photos of the completed project.

Page 4  
09-91-18SA  
August 17, 2009

Your contact with the Division is Daren Rasmussen, who can be reached at telephone number 801-538-7414.

This **ORDER** is subject to the provisions of UTAH ADMIN. CODE R. 655-6-17 of the Division of Water Rights and to UTAH CODE ANN. §§ 63-46b-13 and 73-3-14, which provide for persons or parties with legal standing to file either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this **ORDER**. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this **ORDER**, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken within 20 days after the Request is filed.

Dated this 18 day of August, 2009.



David K. Marble, P.E.  
Assistant State Engineer

Encore

Mailed a copy of the foregoing Order this 18 day of August, 2009, to:

DANA DEAN  
DIVISION OF OIL, GAS, & MINING  
1594 W NORTH TEMPLE STE 1210  
SALT LAKE CITY UT 84114-5801

Corps of Engineers  
Marc Stilson - Regional Engineer  
Richard Clark - EPA  
Kelly Beck - RDCC Coordinator  
Chris Wood - Regional Wildlife Habitat Manager  
State History

By:



Judy Mattson  
Secretary

**COMPLIANCE CERTIFICATION**

**Regional General Permit Number:** 40

**Stream Alteration Number:** \_\_\_\_\_

**Corps Project Identification Number:** \_\_\_\_\_  
(Corps Use Only)

**Permittee's Name and Address:** \_\_\_\_\_  
\_\_\_\_\_

**County Location of Permitted Activity:** \_\_\_\_\_

**Within 30 days after completion of the activity authorized by this permit, please sign and return this certification to the following address:**

**U.S. Army Corps of Engineers  
Intermountain Regulatory Section  
533 West 2600 South, Suite 150  
Bountiful, UT 84010**

**Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers' representative. If you fail to comply with the terms and conditions of the permit, your authorization may be suspended, modified or revoked. If you have any questions about this certification, please contact the Corps of Engineers at 801-295-8380.**

\* \* \*

*I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.*

\_\_\_\_\_  
**Signature of Permittee** **Date**