



OGMCOAL DNR &lt;ogmcoal@utah.gov&gt;

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**0070001 Whiskey Creek Stream Alteration Approval #15-91-06SA**

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**Priscilla Burton** <priscillaburton@utah.gov>

Tue, Sep 15, 2015 at 12:31 PM

To: OGMCOAL DNR &lt;ogmcoal@utah.gov&gt;

Cc: Justin Hart - Utah Wildlife Resource &lt;justinhart@utah.gov&gt;, Keenan Storrar &lt;kstorrar@utah.gov&gt;, "cherylparker@utah.gov" &lt;cherylparker@utah.gov&gt;, Dana Dean &lt;danadean@utah.gov&gt;, Daron Haddock &lt;daronhaddock@utah.gov&gt;, Darin Caine &lt;omanranches@hotmail.com&gt;

This stream alteration permit is for construction of a swale in Whiskey Creek. The Whiskey Creek swale was included in the Eccles Creek pad and culvert removal project which is currently out for bid on the Division of Purchasing's BidSync website as solicitation #16068.

----- Forwarded message -----

From: **Tiffany Gonzales** <tiffanygonzales@utah.gov>

Date: Tue, Sep 15, 2015 at 11:59 AM

Subject: Stream Alteration Approval #15-91-06SA

To: kristine.s.hansen@usace.army.mil, Priscilla Burton &lt;priscillaburton@utah.gov&gt;

Below is a link to view the scanned approval letter.

<http://waterrights.utah.gov/docImport/0575/05755604.pdf>

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*Tiffany Gonzales*

Utah Division of Water Rights

Dam Safety Secretary

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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

## ORDER OF THE STATE ENGINEER

FOR STREAM ALTERATION APPLICATION NUMBER **15-91-06SA**  
IN THE NAME OF UDOGM - UTAH DIVISION OF OIL, GAS, & MINING (COAL  
PROGRAM) FOR ALTERATION TO WHISKEY CREEK IN CARBON COUNTY, UTAH

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 Findings of Fact and Discussion.

### FINDINGS OF FACT

1. The application was received by the Division of Water Rights ("Division") on August 24, 2015, and made available for comment on the Division's webpage, provided to pertinent governmental agencies, and to other entities as warranted, for a period of 20 calendar days, said period concluding prior to September 13, 2015.
2. The application contains the following information:
  - The stated description of the proposed project is: Replacement of culvert and related work associated with Whiskey Creek in Carbon County.
  - The stated purpose of the proposed project is: To return to a functioning crossing.
3. The Division received comments or objections on the proposed project from:
  - USFWS - U.S. Fish & Wildlife Service, Jennifer Lewinsohn
  - USACE - U.S. Army Corps of Engineers (Corps), Kristine Hansen

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

- The USFWS indicated they have no concerns with the project.
- The Corps has indicated that this project qualifies under PGP40.

### 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.
5. Other comments or concerns submitted by interested persons or parties are not believed to be within the purview of the State Engineer in evaluating an Application to Alter a Natural Stream.

### **ORDER**

Stream Alteration Application No. **15-91-06SA**, submitted in the name of UDOGM - Utah Division of Oil, Gas, & Mining (Coal Program), applicant, in order to complete replacement of culvert and related work associated with Whiskey Creek, a natural stream located in Carbon County, Utah, is hereby 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 Programmatic General Permit 040 issued to the State of Utah by the U.S. Army Corps of Engineers on January 3, 2011 and is subject to all conditions therein. Full text of Programmatic General Permit 040 can be found at the following link: <http://www.waterrights.utah.gov/strmalt/whitepapers/PGP40.pdf>. 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 **January 3, 2016**. If work has been initiated or is under contract prior to January 3, 2016, then this order expires on January 3, 2017. Work affecting the bed and/or banks of the stream may not be conducted after the expiration date.
2. A copy of this order must be kept onsite at any time the work authorized under this order is in progress.
3. We suggest that you coordinate with potentially impacted landowners.
4. Photos must be taken before and after project construction and submitted to this office.
5. 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.
6. 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.

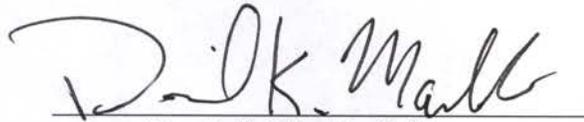
7. Approval of this application does not authorize trespass, easements, rights-of-way, or any other access and land use permits. It is the responsibility of the applicant to obtain any such authorizations as may be necessary for this proposal.
8. Excavated material and construction debris may not be 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.
9. 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.
10. Ingress and egress access should be kept to a minimum.
11. Work must be accomplished during a period of low flow. Sediment introduced into stream flows during construction must be controlled to prevent increases in turbidity downstream. Flows must be diverted away from the construction area using a non-erodible cofferdam or other means of bypass.
12. Machinery must be properly cleaned and fueled offsite prior to construction.
13. 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].
14. The applicant must maintain existing stream shade on all Class 3 A streams. Destruction of any stream shade vegetation within the project area must be replaced at a 1:1 shade ratio at mature life stage with native vegetation along a Class 3 A stream. If stream shade vegetation is to be removed, the applicant must submit an estimate in their restoration plan of the portion of the water surface area within the project area that is shaded by estimating areas with no shade, poor shade, and shade prior to the commencement of work. Time of the year, time of the day, and weather can affect your observation of shading. Therefore, the relative amount of shade is a professional best-guess estimate. Ideally the applicant would be measuring when the sun is at an angle that provides maximum stream shade and the vegetation is in full leaf-out. As noted in General Condition #6 of PGP 40 the destruction of mature trees is to be avoided to the maximum extent possible and the permittee is ultimately responsible for revegetation success.

15. Culverts shall be placed at locations that will minimize the possibility of washouts. Areas adjacent to meanders must be avoided as water may be directed toward the edges, rather than the center of the culvert. Culverts must be placed at GRADE and create no change in the profile of the stream bottom to avoid upstream erosion. Fill, adjacent to the culvert, must be adequately compacted to prevent piping and washout of the crossing.
16. 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.

Your contact with the Division is Daren Rasmussen, who can be reached at telephone number 801-538-7377.

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. §§ 63G-4-302 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 14th day of September, 2015.



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

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September 14, 2015

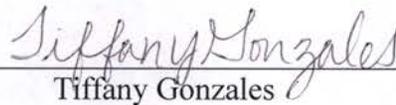
Enclosure

Mailed a copy of the foregoing Order this 14<sup>th</sup> day of September, 2015, to:

DIVISION OF OIL, GAS & MINING – COAL PROGRAM  
1594 WEST NORTH TEMPLE, SUITE 1210  
SALT LAKE CITY UT 84114-5801

Corps of Engineers  
Marc Stilson - Regional Engineer  
Richard Clark - EPA  
Chris Wood - Regional Wildlife Habitat Manager  
Kristine Hansen, [Kristine.S.Hansen@usace.army.mil](mailto:Kristine.S.Hansen@usace.army.mil)  
Priscilla Burton, [priscillaburton@utah.gov](mailto:priscillaburton@utah.gov)  
Jennifer Lewinsohn - U.S. Fish & Wildlife Service

By:



Tiffany Gonzales  
Secretary