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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 **18-91-03SA**
IN THE NAME OF DOGM – DIVISION OF OIL GAS & MINING - COAL PROGRAM
FOR ALTERATION TO GORDON CREEK - NORTH FORK OF THE NORTH FORK
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 March 26, 2018, 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 April 15, 2018.
2. The application contains the following information:
 - The stated description of the proposed project is: Removal of culvert and rehabilitation of channel to re-establish natural open channel associated with Gordon Creek - North Fork of the North Fork in Carbon County.
 - The stated purpose of the proposed project is: To re-establish natural open channel.
3. The Division received comments or objections on the proposed project from:
 - State Floodplain Manager - Kathy Holder
 - USACE – U.S. Army Corps of Engineers (Corps) - Ashley Kraetsch

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

- Kathy Holder has asked that the applicant must be compliant with all rules and regulations of the Federal Floodplain Insurance Program as administered by the local city or county floodplain administrator.
- The Corps has indicated that this project qualifies under PGP10.

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. **18-91-03SA**, submitted in the name of DOGM – Division of Oil Gas & Mining - Coal Program, applicant, in order to complete removal of culvert and rehabilitation of channel to re-establish natural open channel associated with Gordon Creek - North Fork of the North Fork, 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 10 issued to the State of Utah by the U.S. Army Corps of Engineers on February 22, 2016, and is subject to all conditions therein. Full text of Programmatic General Permit 10 can be found at the following:

http://www.waterrights.utah.gov/strmalt/whitepapers/20160222_PGP10.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 **April 16, 2020**. Work affecting the bed and/or banks of the stream may not be conducted after the expiration date. A request for extension must be submitted in writing to the Division and include an explanation for project delay. The request must be submitted at least 30 days prior to expiration of the order.
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. 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.

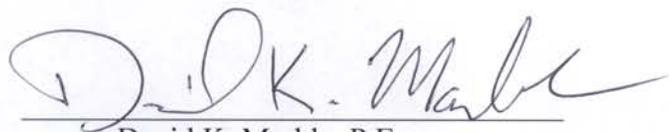
6. Excavated material and construction debris may not be wasted in any stream channel or placed in flowing waters, this will include material such as grease, oil, joint coating, or any other possible pollutant. Excess materials must be wasted at an upland site well away from any channel. Construction materials, bedding material, excavated material, etc. may not be stockpiled in riparian or channel areas.
7. 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.
8. 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.
9. Machinery must be properly cleaned and fueled offsite.
10. 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].
11. Disturbed riparian areas must be planted with naturally occurring vegetation. Plantings shall be protected from grazing animals by fencing. If beaver or other rodent damage should occur, other methods such as metal collars placed around the trees must be included.
12. 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 10 the destruction of mature trees is to be avoided to the maximum extent possible and the permittee is ultimately responsible for revegetation success.

13. 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.
14. Within 30 days after the completion of this project, a 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 10, thereby placing the applicant in violation of Section 404 of the Clean Water Act. Form can be found at:
<http://www.waterrights.utah.gov/strmalt/ComplianceCertification.pdf>

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 16th day of April, 2018.



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

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Enclosure

Mailed a copy of the foregoing Order this 16th day of April, 2018, to:

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

Kathleen Anderson - Corps of Engineers, Kathleen.Anderson@usace.army.mil
Marc Stilson - Regional Engineer
Richard Clark - EPA
Chris Wood - Regional Wildlife Habitat Manager
Kathy Holder - Division of Emergency Management, kcholder@utah.gov
Keenan Storrar, KStorrar@utah.gov

By: Tiffany Gonzales
Tiffany Gonzales
Secretary