



SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

BRIAN C. STEED
Executive Director

Division of Water Rights

TERESA WILHELMSEN
State Engineer/Division Director

ORDER OF THE STATE ENGINEER

FOR STREAM ALTERATION APPLICATION NUMBER **21-35-38SA**
IN THE NAME OF JOHN LEWIS FOR ALTERATION TO SMITH CREEK -
SOUTH TRIBUTARY IN WEBER COUNTY, UTAH

Stream Alteration Application No. **21-35-38SA**, submitted in the name of John Lewis, applicant, in order to install culvert(s) and instream flood-control structures associated with Smith Creek - south tributary, a natural stream located in Weber 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, 2021, and is subject to all conditions therein. Full text of Programmatic General Permit 10 can be found at the following link:

https://waterrights.utah.gov/strmalt/whitepapers/20210222_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 **October 12, 2023**. Work affecting the bed and/or banks of the stream may not be conducted after this date. Extension of the order is subject to review by the Division. A request for extension must be submitted in writing to the Division and include an explanation for project delay.
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. Project authorization is subject to plans/information received from the Applicant/Representative September 16, 2021.
6. 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.
7. 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.



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. If necessary, flows must be diverted away from the construction area through use of a non-erodible cofferdam or other means of bypass.
12. Equipment must be properly cleaned off-site prior to construction. If necessary during and/or after construction, fueling and cleaning of equipment must occur well away from any stream channels.
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. 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.
15. Cement is toxic to aquatic organisms, and its introduction into waters of the United States would constitute a violation of the Clean Water Act. Cement or concrete may not be allowed to enter stream flows. Water must be excluded from areas where concrete or cement is used until it has set. Contaminated water pumped from the construction area may not be discharged in a manner that will allow it to enter flows.

16. Bedding and backfill material, placed around the pipe, may not be more free draining than existing soils in stream channels, banks, and riparian zones. Loosely compacted material may act to violate this condition. Bedding and backfill materials must be either fine grained or constructed in such a manner that it does not act as a drain. This shall include placing clay cutoff collars, or utilizing compaction techniques.
17. 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>

The statutory process and criteria for evaluation of this application are described at Utah Code Ann. § 73-3-29 and Administrative Rule R655-13. The State Engineer has determined that this application does meet the necessary legal criteria for approval based upon the following Findings of Fact and reasoning set forth in the Discussion.

FINDINGS OF FACT

1. The initial application was received by the Division of Water Rights (“Division”) on July 27, 2021, 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 August 16, 2021. With additional information received, the application was considered complete September 16, 2021.
2. The application contains the following information:
 - The stated description of the proposed project is: To install culvert(s) and instream flood-control structures associated with Smith Creek - south tributary in Weber County.
 - The stated purpose of the proposed project is: To provide access and storm water management.
3. The following comments or objections on the proposed project were received from:
 - USACE - U.S. Army Corps of Engineers (Corps) - Bridget Keiter
 - Weber County - Gary Myers

The comments or objections received are summarized as follows:

- The Corps has indicated that this project qualifies under PGP10.
- Weber County has indicated that they will need the Applicant to get a Floodplain Permit. For more information, contact Gary Myers at GMyers@WeberCountyUtah.gov or 801-399-8771.

DISCUSSION

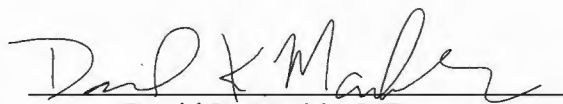
1. Based on a review of the Division's water rights records and/or a review of the application by personnel of the Division's regional office, it is the opinion of the State Engineer that the project will not impair vested water rights.
2. It is the opinion of the State Engineer that the project will 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.

Your contact with the Division is Daren Rasmussen, who can be reached at DarenRasmussen@utah.gov or at telephone number 801-538-7377. Information pertaining to this application/decision can be found at the following link:
https://waterrights.utah.gov/cgi-bin/strmview.exe?Modinfo=Viewapp&Permit_Number=21350038

This **ORDER** 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

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 12th day of October, 2021.


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

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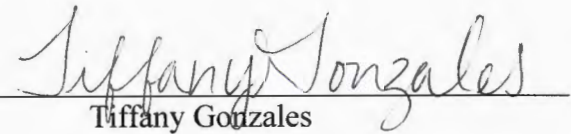
Enclosure

Mailed a copy of the foregoing Order this 12th day of October, 2021, to:

JOHN LEWIS
3718 NORTH WOLF CREEK DRIVE
EDEN, UT 84310

Bridget Keiter - U.S. Army Corps of Engineers, bridget.m.keiter@usace.army.mil
Gary Brimley - Regional Engineer, garybrimley@utah.gov
Nolan Hahn - EPA, Hahn.Nolan@epa.gov
Scott Walker - Wildlife Resources, scottwalker@utah.gov
Angelia Crowther - Division of Emergency Management, acrowther@utah.gov
Gary Myers - Weber County, gmyers@co.weber.ut.us
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By:


Tiffany Gonzales
Secretary