GARY R. HERBERT
Governor
GREG 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

RECEIVED
JUN - 5 2013

ORDER OF THE STATE ENGINEER

FOR STREAM ALTERATION APPLICATION NUMBER **13-91-06SA**
IN THE NAME OF SUNNYSIDE COGENERATION ASSOCIATES FOR ALTERATION TO ICELANDER 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 May 8, 2013, 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 May 28, 2013.

2. The application contains the following information:
   - The stated description of the proposed project is: Construction of sedimentation pond and sediment trap associated with Icelander Creek in Carbon County.
   - The stated purpose of the proposed project is: To capture storm water & treat sediment.

3. The Division received comments or objections on the proposed project from:
   - U.S. Army Corps of Engineers (Corps), John Urbanic c/o Michael Pectol

   The comments or objections received by the Division are summarized as follows:
   - 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. **13-91-06SA**, submitted in the name of Sunnyside Cogeneration Associates, applicant, in order to complete construction of sedimentation pond and sediment trap associated with Icelander 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 General Permit 040 issued to the State of Utah by the U.S. Army Corps of Engineers on January 3, 2011. 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 **May 30, 2015**. Work affecting the bed and/or banks of the stream may not be conducted after this date. Extension of the order is subject to reverification by the U.S. Army Corps of Engineers and review by the Division. 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. Be cognizant of inadvertent consequences from bank hardening such as changes in sediment movement and deposition patterns in and near the activity area, impacts to fish, wildlife and plant species, and likely impact the work would have on upstream and downstream (and across stream) properties. Riprap should be installed along with woody vegetation in and around the area so root mass can hold soil.

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. 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.

9. 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.

10. 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.

11. 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.

12. If historical or archaeological resources such has 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.

13. 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.

14. Ingress and egress access should be kept to a minimum.

15. Machinery must be properly cleaned and fueled offsite prior to construction.

16. 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 manmade].

17. 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.

18. Assure that any required Water Rights are in order.

19. This stream alteration project is associated with Dam Safety approval UT53723.

20. 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 30th day of May, 2013.

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

Enclosure

Mailed a copy of the foregoing Order this 30th day of May, 2013, to:

SUNNYSIDE COGENERATION ASSOCIATES
P.O. BOX 159
SUNNYSIDE UT 84539

Corps of Engineers
Marc Stilson - Regional Engineer
Richard Clark - EPA
Chris Wood - Regional Wildlife Habitat Manager

By: Tiffany Gonzales
Tiffany Gonzales
Secretary

COMPLIANCE CERTIFICATION

Programmatic 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**