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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 **15-99-01SA**  
IN THE NAME OF ENERGY FUELS RESOURCES (USA) INC. FOR ALTERATION  
TO BULLSEYE CANYON IN SAN JUAN 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 initial application was received by the Division of Water Rights ("Division") on November 6, 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 November 26, 2015. The completed application was received December 22, 2015, with comment period concluding prior to January 5, 2016.
2. The application contains the following information:
  - The stated description of the proposed project is: Stabilization of bank associated with Bullseye Canyon in San Juan County.
  - The stated purpose of the proposed project is: To protect building.
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) - Jon Boe

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

- Kathy Holder asked if the applicant has gotten floodplain permits from their community. For additional information, Kathy can be contacted at 801-538-3332 or at [kcholder@utah.gov](mailto:kcholder@utah.gov).
- The Corps, after receiving additional information, 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. **15-99-01SA**, submitted in the name of Energy Fuels Resources (USA) Inc., applicant, in order to complete stabilization of bank associated with Bullseye Canyon, a natural stream located in San Juan 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 link:

[http://www.waterrights.utah.gov/strmalt/whitepapers/20160222\\_PGP10.pdf](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 **March 21, 2018**. 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.

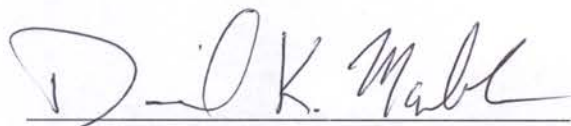
4. Photos must be taken before and after project construction and submitted to this office.
5. Disturbed areas must be planted with a variety of appropriate vegetation (especially woody vegetation where feasible) to help hold the soil around riprap, prevent excessive erosion, and to help maintain other 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. 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. Ingress and egress access should be kept to a minimum.
10. 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.
11. Machinery must be properly cleaned and fueled offsite.
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. 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.
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 21<sup>st</sup> day of March, 2016.



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

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Enclosure

Mailed a copy of the foregoing Order this 21<sup>st</sup> day of March, 2016, to:

ENERGY FUELS RESOURCES (USA) INC.  
225 UNION BOULEVARD, SUITE 600  
LAKEWOOD CO 80228

Corps of Engineers  
Marc Stilson - Regional Engineer  
Richard Clark - EPA  
Chris Wood - Regional Wildlife Habitat Manager  
Andrea Reither - [areither@energyfuels.com](mailto:areither@energyfuels.com)  
Kathy Holder - Utah Division of Emergency Management, [kcholder@utah.gov](mailto:kcholder@utah.gov)

By: Tiffany Gonzales  
Tiffany Gonzales  
Secretary