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Governor

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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

DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>Blue Mt. Canal Co. PO Box 763 Monticello, UT 84535</p> <p>RESPONDENT</p>	<p>MEASURING DEVICE NOTICE</p> <p>SEAA No. 1301</p> <p>WATER RIGHTS: 09-2009 & 09-2137</p>
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TO: Blue Mt. Canal Co.:

I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

(1) *To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, except as provided by Subsection (4), shall construct or install and maintain controlling works and a measuring device at:*

- (a) *each location where water is diverted from a source; and*
- (b) *any other location required by the state engineer.*

(2) *A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.*

(3) *The state engineer shall approve the design of:*

- (a) *the measuring device...*

(5) *An owner or manager of a reservoir shall construct and maintain a measuring device as directed by the state engineer to measure the inflow, storage content, and outflow from the reservoir.*

(a) *The state engineer shall approve the design and location of the measuring device.*

(b) *The owner or manager of a reservoir shall make the measuring device accessible to the state engineer or water commissioner.*



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March 10, 2009

Subject: BLUE MT. MEASURING DEVICE ORDER

(6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:

- (a) forbid the use of water until the user complies with the state engineer's requirement; and*
- (b) commence enforcement proceedings authorized by Section 73-2-25.*

II. STATEMENT OF FACTS

1. The Respondent diverts water from the North Fork of Montezuma Creek under the above-listed water rights.
2. The Division recognizes the need for increased regulation on the North Fork of Montezuma Creek and is working to clarify the ownership and relative priority of water rights in the area. Prior to the beginning of the 2009 irrigation season, the Division will issue an Interim Distribution Order. ~~In addition to clarifying water rights and relative priority among the parties using water from the North Fork of Montezuma Creek, the Interim Distribution Order will require monitoring and reporting of diverted flows.~~
3. Accurate and equitable distribution of the water from the North Fork of Montezuma Creek requires that the respondent's diversion be equipped with a functional and accurate measuring device.

III. ACTIONS REQUIRED

Install an Accurate Measurement Device below the Blue Mt. - Carlisle Split

At a point 232 ft South and 67 ft East from the N4 Corner of Section 28, T33S, R23E SLB&M, a modified 36" Parshall flume has been installed for the purpose of measuring and splitting flows between the respondents Blue Mt. Irrigation Co. and Carlisle Water Co. The flume is not an accurate measurement device. The splitting mechanism creates two different flow conditions in the throat and introduces a turbulent flow condition in the critical flow section resulting in inaccurate flow measurements. The flume does function acceptably as a splitter and may continue to be used to divide flows between Blue Mt. and Carlisle.

At a point near to and downstream of the split, the Respondent Blue Mt. Canal Co. shall provide and install a device to accurately measure Blue Mt.'s portion of the diverted flow. Prior to commencing the required work the Respondent shall consult with the Division to assure that the planned measuring device will satisfy the requirements of this Order. The required work shall be completed and the Division notified of said completion no later than May 1, 2009.

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Provide an Accurate Measurement Device for Flow in the North Fork of Montezuma Creek

The USGS operated an in-stream measurement device on the North Fork of Montezuma Creek. The stream gauge was located at a point 1187 ft South and 127 ft East from the W4 corner of Section 30, T33S, R23E SLB&M. County funding for this gage has been cut and data collection has been discontinued. **The Blue Mt. Canal Co., along with the City of Monticello and the Carlisle Water Co. shall provide and install a device to measure in-stream flows in the North Fork of Montezuma Creek no later than May 1, 2009.** Methods to measure the in-stream flows include but are not limited to:

- Fund data collection at the existing USGS gauging station.
- Install a new measuring device.
- The flow of North Fork could be determined by summing the measurements of the flows diverted to the Blue Mt. Irrigation Co, to the Carlisle Water Co, and the flow returned to the creek. This would require that the diversion on North Fork be dry-dammed so the entire flow of the creek is diverted. Also the concrete section at the return culvert would need to be fitted with a staff gauge and rated so it could be used as a measuring device.

Prior to commencing the required work the Respondents shall consult with the Division to assure that the planned measuring device will satisfy the requirements of this Order.

Automated Monitoring Equipment Option

Prior to the start of the 2009 irrigation season, the Division will issue an Interim Distribution Order. The Interim Distribution Order will clarify water rights and relative priority among parties using water from the North Fork of Montezuma Creek. The Interim Distribution Order will require monitoring and reporting of diverted flow three times weekly throughout the irrigation season. In lieu of reading the measuring device and reporting the flow three times weekly, automated monitoring instrumentation may be installed in conjunction with the required measurement device. Once operational, the automated monitoring equipment would satisfy the monitoring and reporting requirement. Should this alternative be of interest, prior to purchasing and installing such instrumentation the Respondent shall consult with the Division to assure that the planned equipment will satisfy the requirements of this Order.

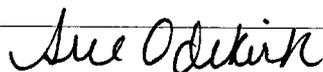
IV. ADDITIONAL AGENCY ACTION

The Respondent is encouraged to diligently attend to the work required by this Order. If the required measurement devices are not satisfactorily installed and rendered operational by May 1, 2009, the Division may issue an Order forbidding the use of water until the Respondent has complied. If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008). If determined to be in violation an Order, the Respondent may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations. In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation.

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The orderly distribution of water from the North Fork of Montezuma Creek in accordance with existing water rights is a concern to Division as well as to each of the parties using water from the North Fork of Montezuma Creek. To that end we appreciate and thank you for your cooperation. If you have any questions concerning this Order please contact Marc Stilson, Southeast Regional Engineer at (435) 613-3750 or Sue Odekirk, Distribution Engineer at (801) 538-7431.

Dated this 11th day of March, 2009



Sue Odekirk, P.E.
Distribution Engineer

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 11th day of March, 2009, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

**Blue Mt. Canal Co.
PO Box 763
Monticello, UT 84535**



Jesse Nelson
Division of Water Rights
Field Services Secretary

JN
cc: Marc Stilson
Carlisle Water Co.
City of Monticello
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