

Deep Creek

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p><b>Lance Luck</b></p> <p><b>Martin Huber, Mosby Irrigation Company</b></p> <p><b>RESPONDENT</b></p>	<p><b>MEASURING DEVICE AND CONTROL STRUCTURE NOTICE</b></p> <p>SEAA No. 1347  DISTRIBUTION ACCOUNT: 100593  WATER RIGHTS: 45-  515,523,524,905,906,5246,5284</p>
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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, ... 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; and*
  - (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works. ...*
- (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 Deep Creek/Mosby Creek at the Lance Luck diversion operated under the Deep Creek distribution system and the Mosby Irrigation Company by the water commissioner appointed by the State Engineer.

SCANNED

2. The flume used to measure the water diverted at one of the Respondent's diversions is located at the point near South 682 ft West 371 ft from the NE Corner of section 18, T 3S Range 19 E Salt Lake Base and Meridian.
3. The flume at the above location is washed out on the west side of the headwall such that water bypasses the flume without being properly measured.
4. A measurement is needed in order for the commissioner to properly regulate and distribute the Mosby Irrigation Company water.
5. The Respondent receives water at the Lance Luck West Side Flume located near the point North 90 ft and East 584 ft from the S4 Corner of Section 17, Township 3 South and Range 19 East, Salt Lake Base and Meridian. The flume contains sediment and may need to be elevated to prevent sediment deposits.
6. The Respondent owns and operates another flume known as the Lance Luck East Side flume located at or near the point South 313 ft East 1040 ft from the N4 Corner of Section 20, Township 3 South, Range 19 East, Salt Lake Base and Meridian.
7. The location of the flume described in number 6 is across the stream from the access road and a single wood plank across the stream serves as a footbridge access to the diversion and flume.

### III. ACTIONS REQUIRED

1. The respondent must maintain the Parshall flumes identified above so that they provide an accurate measurement of the water delivered by the commissioner.
2. A safer and wider footbridge must be provided to the commissioner at the flume and diversion structure located as described under item 6 and 7 above. At a minimum, another two planks must be placed and tied together to help prevent risks of injury when a plank breaks. The bridge must also hold two people safely. Even though the commissioner is able to navigate this bridge without hesitation, the Respondent must provide safe access to the diversion and flume.
3. The work must be completed before April 15, 2010.

### IV. ADDITIONAL AGENCY ACTION

1. The Respondent is encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.

2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondent has complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).
3. 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).
4. 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 and replacement of up to 200% of water diverted without right. In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation.”

#### V. FURTHER INFORMATION

If the Respondent has any questions concerning this Notice, state laws and rules, or the required and recommended action, please discuss them with:

Robert Leake  
*Regional Engineer*  
*Vernal Office/Eastern Region*  
*Utah Division of Water Rights*  
*(435) 781-5327*

Ben Anderson  
*Water Rights Distribution Engineer*  
*Utah Division of Water Rights*  
*(801) 538-7469*

*1594 W North Temple Ste 220*  
*P.O. Box 166300*  
*Salt Lake City, UT 84104-6300*

Dated this 30th day of September, 2009

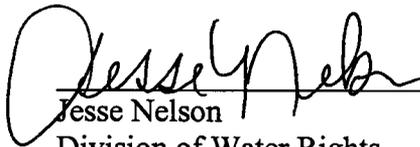
  
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Ben L. Anderson, P.E.  
Water Rights Distribution Engineer

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 30 day of September, 2009, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

**Lance Luck  
9250 N 1000 W  
Neola, Utah 84053**

**Martin Huber, Mosby Irrigation Company  
P O Box 453  
Lapoint, UT 84039**

A handwritten signature in black ink, appearing to read "Jesse Nelson", is written over a horizontal line.

Jesse Nelson  
Division of Water Rights  
Field Services Secretary

cc: Robert Leake, Regional Engineer  
Kristopher Blanchard, Water Commissioner

# U.S. Postal Service™ Delivery Confirmation™ Receipt

DELIVERY CONFIRMATION NUMBER:  
9573 1400 0001 9804 1566

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

*Please Print Clearly*  
Lance Luck  
9250 N 1000 W  
NEOLA, UT 84053

Postmark  
Here

SEAA 1347

### POSTAL CUSTOMER:

Keep this receipt. For Inquiries:  
Access internet web site at  
[www.usps.com](http://www.usps.com)<sup>®</sup>  
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PS Form 152, May 2002

# U.S. Postal Service™ Delivery Confirmation™ Receipt

DELIVERY CONFIRMATION NUMBER:  
9573 1400 0001 9804 1573

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

*Please Print Clearly*  
Martin Huber / Madalyin  
PO Box 453  
Lapoint, UT 84039

Postmark  
Here

SEAA 1347

### POSTAL CUSTOMER:

Keep this receipt. For Inquiries:  
Access internet web site at  
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