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State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER KENT L. JONES
Executive Director *State Engineer/Division Director*

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>Moab Irrigation Co. PO Box 385 Moab, UT 84532</p> <p>Michael M. Dervage and Kathryn Collard 4265 South 1400 East Salt Lake City UT 84124</p> <p>Vickie L. Morris 76 South Main Street Suite #18 Moab UT 84532</p> <p>RESPONDENTS</p>	<p>HORSE CREEK HEAD GATE & MEASURING DEVICE NOTICE</p> <p>SEAA No. 1411 DISTRIBUTION ACCOUNTS: 101431, 101436 WATER RIGHTS: 05-2013, 05-47</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, 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; and*
- (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works.*

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Subject: HORSE CREEK HEAD GATE & MEASUREMENT 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 Respondents may divert water from the Horse Creek under the above-listed water rights through a head gate at the following location: South 50 feet and East 2600 feet from the NW corner of Section 5, Township 27S and Range 24E, Salt Lake Baseline and Meridian.
2. Accurate and equitable distribution of the water from the Mill Creek and its tributaries requires that the respondents' diversion from the Horse Creek be equipped with a head gate that the commissioner can use to regulate the flow of water and a functional and accurate measuring device. September 15, 2010 the diversion head gate and flume were inspected.
 - a. A large tree has fallen onto the head gate and diversion structure. The head gate is not accessible and cannot be locked. The concrete diversion structure is cracked and leaks water from several locations.
 - b. The flume is tilted so that the water does not flow freely and therefore is not accurately measured. The flume has no staff gage and is overgrown with vegetation so that it is difficult to access and observe.

III. ACTIONS REQUIRED

1. A functional and lockable headgate must be installed.
2. Vegetation must be cleared away so that the flume is reasonably accessible. If high water is to be diverted from Horse Creek, the flume must be leveled horizontally and longitudinally. A staff gage must be attached to the flume.

Water should not be diverted from Horse Creek next spring unless the above actions have been completed. Prior to commencing the required work the Respondents shall consult with the River Commissioner, Rob Magleby, to assure that the planned improvements will satisfy the requirements of this Order.

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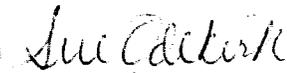
IV. ADDITIONAL AGENCY ACTION

The Respondents are encouraged to diligently attend to the work required by this Order. If the required head gate and flume are not satisfactorily installed and rendered operational by April 1, 2011, the Division may issue an Order forbidding the use of water until the required work is complete.

If an Order forbidding the use of water is issued and is violated by the Respondents, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).

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

Dated this 10th day of November, 2010.


Sue Odekirk, P.E.
Distribution Engineer

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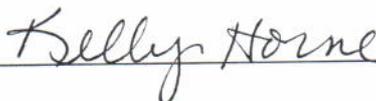
CERTIFICATE OF MAILING

I, the undersigned, certify that on this Dated this 10th day of November, 2010, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

**Moab Irrigation Co.
PO Box 385
Moab, UT 84532**

**Michael M. Dervage and Kathryn Collard
4265 South 1400 East
Salt Lake City UT 84124**

**Vickie L. Morris
76 South Main Street Suite #18
Moab UT 84532**



Kelly Horne
Division of Water Rights
Field Services Secretary

cc: Buzz Bates, Marc Stilson, Dave Horsley, Rob Magleby,
File

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Article Sent To: (to be completed by mailer)

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Vickie Morris
(Please Print Clearly)
765. Main St. #18
Moab UT 84532

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Moab UT 84332

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Article Sent To: (to be completed by mailer)

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Michelle Derrage & Kathryn Colvard
(Please Print Clearly)
42655.1400E SLC 84124

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