



GARY R. HERBERT  
Governor  
GREGORY S. BELL  
Lieutenant Governor

**State of Utah**  
**DEPARTMENT OF NATURAL RESOURCES**  
**Division of Water Rights**

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

**DIVISION OF WATER RIGHTS**

In the matter of: **Gay Ditch Co.**

**Blue Water Marine**  
**PO Box 390**  
**Helper, UT 84526**

**Joy Gipson**  
**PO BOX 168**  
**Helper, UT 84526**

**Lowdermilk Rock Products of Utah, Inc.**  
**PO BOX 509**  
**Helper, UT 84526**

**John C. Marchello**  
**1776 Castle Ave**  
**Price, UT 84501-2026**

**Robert Radakovich**  
**2564 S. Corral Dr.**  
**Grand Junction, CO 81505**

**Sacco Brothers Land & Livestock**  
**1655 W 2100 N**  
**Helper, UT 84526**

**RESPONDENTS**

**MEASURING DEVICE NOTICE**

SEAA No. 1325

DISTRIBUTION ACCOUNTS: 101684;  
101686; 101683; 101687; 101682; 101680;  
101685; 101681; 101688; 101689

WATER RIGHTS: 91-1754; 91-1755; 91-  
1756; 91-1757; 91-1775; 91-1776; 91-1777;  
91-1778; 91-1779; 91-1780; 91-1781; 91-  
1782; 91-1783; 91-1784; 91-1785; 91-1786;  
91-1787; 91-1788; 91-1789; 91-1790; 91-  
1791; 91-1792; 91-1795; 91-1796; 91-1797;  
91-1798; 91-1799; 91-1800 – 1808; 91-719-  
724; 91-726-728; 91-730-732

TO: Gay Ditch 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).

**SCANNER**

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...*

*(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. Water from the Price River is distributed to the respondents via the Gay Ditch under the above-listed water rights. The commissioner measures the water distributed to the Gay Ditch at the Parshall flume located next to Bill Branson's house just off the Helper Highway.
2. The Division has inspected the measurement device on the Gay Ditch and determined that due to several factors including: improper sizing, turbulent approach conditions and an improperly located staff gage, the flume measures 28 % less water than is actually entering the ditch.
3. Equitable distribution of the water from the Price River requires that the Respondents' diversion be equipped with an accurate measuring device.
4. The Respondents pay the annual distribution assessments for water distributed to the Gay Ditch. The Division understands the Respondents to be the current users of the water distributed under the above-listed water rights and as such, they are receiving this Measurement Device Notice.

SCANNED

### III. ACTIONS REQUIRED

The Division inspected the existing flume on the Gay Ditch. It was observed that the concrete sump preceding the flume is too small to slow the water sufficiently to measure it properly in a flume. It was further observed that the staff gage is not mounted in the correct location. The flume measurement was found to be 28% lower than the actual flow.

1. **The Respondents are hereby notified that a suitable measurement device, such as a pipe meter, weir or flume with stilling well, or other approved measurement device must be installed at or near the head of the Gay Ditch no later than April 1, 2010.**
2. Control features, adequate to eliminate turbulent water flow should precede the measurement device. The measurement device should be properly installed and if a weir or flume is selected, equipped with a stilling well and a properly installed staff gage. The measurement device should be followed by an outfall condition adequate to ensure that water doesn't back up and submerge the measurement device.
3. The area surrounding the device shall be sufficiently clear of vegetation to allow reasonable access and observation by the Commissioner.
4. **Prior to commencing the required work, the Respondents shall consult with the Division to ensure that the planned improvements will satisfy the requirements of this Notice.**

### IV. ADDITIONAL AGENCY ACTION

The Respondents are encouraged to diligently attend to the work required by this Order. If a suitable measurement device is not properly installed and operational by April 1, 2010, the Division may issue an Order forbidding the use of water until the requirements of this Notice have been met. Should an Order forbidding the use of water be violated, the Division may commence enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008). Violators 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, violators may be liable for expenses incurred by the Division in investigating and stopping violations.

SCANNED

The equitable distribution of water from the Price River 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 Notice please contact Sue Odekirk, Distribution Engineer at (801) 538-7431 or Marc Stilson, Southeast Regional Engineer at (435) 613-3750.

Dated this 18<sup>th</sup> day of August, 2009

A handwritten signature in cursive script that reads "Sue Odekirk".

Sue Odekirk, P.E.  
Distribution Engineer

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 19<sup>th</sup> day of August 2009, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

**Blue Water Marine**  
**PO Box 390**  
**Helper, UT 84526**

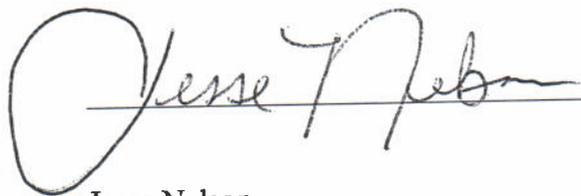
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Jesse Nelson  
Division of Water Rights  
Field Services Secretary

**SCANNED**

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August 18, 2009

Subject: Gay Ditch Co. Measuring Device Notice

JN

cc: Marc Stilson

Tom Bruno

Robert Davis

Electronic – Aaron Hunt

**SCANNED**