

**BEFORE THE DIVISION OF WATER RIGHTS**

<p>In The Matter Of:</p> <p><b>Marvin Huber</b></p> <p><b>RESPONDENT</b></p>	<p><b>MEASURING DEVICE NOTICE</b></p> <p>SEAA No. 1447 DISTRIBUTION ACCOUNTS: 100617 WATER RIGHT: 43-765</p>
--	--

**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 (and/or tributaries) into the Lower Huber Canal/Ditch, which is operated under the direction of the Deep Creek Water Commissioner on the Deep Creek Distribution System.

2. Based on our water right records, the point of diversion associated with your water deliveries under water right 43-765 is located at or near N 600 ft E 1020 ft from SW cor., Sec 04, T1S, R2E, USBM. The flume is located much farther downstream near the highway East of Lapoint, Utah.
3. A reliable water measurement flume is necessary to enable the water commissioner to measure the quantity of water he delivers under the above water right, and other water rights that he delivers and measures at this location.
4. The flume does not function properly due to corrosion over the years and it failed this year as water is flowing under and around it.
5. Even if the flume was new, the floor elevation of the flume is too low relative to the water level in the canal. This causes the flume to submerge, so it does not provide a reliable flow measurement.
6. Water deliveries to the Lower Huber Canal/Ditch must be measured, controlled and reported by the Deep Creek Water Commissioner.

### III. ACTIONS REQUIRED

1. A new flume or other suitable measuring device must be installed to enable the commissioner and/or others to obtain a reliable flow measurement of the amount of water delivered into your canal below the location where the Mosby water is delivered to the Whiterocks System shareholders. If a new flume is properly installed (at a sufficiently higher elevation so the flume does not submerge and is level) in the existing flume location and the downstream channel is kept clean, it should perform well enough to get a reliable flow measurement.
2. **The required work must be completed before April 15, 2013.**

### 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*  
*Eastern Region*  
*Utah Division of Water Rights*  
*Vernal Office*  
*(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 4th day of September, 2012



---

Ben L. Anderson, P.E.  
Distribution Engineer  
Utah Division of Water Rights

cc: Robert Leake, Regional Engineer  
Tyler McKee, Deep Creek Water Commissioner

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 4<sup>th</sup> day of September, 2012, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

**Marvin Huber**  
**PO Box 216**  
**Lapoint, UT 84039**

Kelly Horne  
Kelly Horne  
Division of Water Rights  
Field Services Secretary

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

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

(Please Print Clearly)  
Marvin Huber  
PO BOX 216  
LAPPOINT, UT 84039

Postmark  
Here

9/4/12

**POSTAL CUSTOMER:**  
Keep this receipt. For Inquiries:  
Access internet web site at  
[www.usps.com](http://www.usps.com)®  
or call 1-800-222-1811

**CHECK ONE (POSTAL USE ONLY)**

- Priority Mail™ Service  
 First-Class Mail® parcel  
 Package Services parcel

(See Reverse)

DELIVERY CONFIRMATION NUMBER:  
9547 4085 T000 004T 90ED  
1400 0001 9805