

**BEFORE THE DIVISION OF WATER RIGHTS**

<p>In The Matter Of:</p> <p style="text-align: center;"><b>3 Rivers Ranch Bob Nilsen, Brad Zimmerman, Shawn Bradley</b></p> <p style="text-align: center;"><b>RESPONDENT</b></p>	<p style="text-align: center;"><b>MEASURING DEVICE AND CONTROL STRUCTURE NOTICE</b></p> <p style="text-align: center;">SEAA No. 1460 DISTRIBUTION ACCOUNTS: 100593, 100604 WATER RIGHTS: 45-515, 45-5246, 43-780, 43-783, 43-1427</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 surface irrigation water on West Mosby Creek and Mosby Creek located within the Deep Creek Distribution System operated under the direction of the Deep Creek Water Commissioner appointed by the State Engineer.
2. A field inspection of the Deep Creek System was conducted on June 4, 2013.
3. The pipeline diversion, known as the Nilsen/Wilkerson pipeline on West Mosby Creek, does not have a functional and lockable control gate. Flumes are not the preferred

measuring device for pipelines due to varying flows. A pipeline meter would perform much better at this diversion.

4. The diversion known as the Lance Luck No.2 East Side Flume was showing a false high measurement due primarily to partial submergence resulting from excess sediment downstream.
5. Many of the flumes within the Deep Creek System require a cleaning each year as routine maintenance. Maintenance is an ongoing requirement. We appreciate all that is done to improve water measurements at the 3 Rivers Ranch Diversions on the Deep Creek System.
6. Water users on this system need to periodically inspect their water measuring devices and make sure the sediment and/or debris is removed and they are functioning properly.

### III. ACTIONS REQUIRED

1. An adjustable headgate (control gate) is required at the Nilsen/Wilkerson Pipeline Diversion on West Mosby Creek.
2. A measuring device is required to measure the flow diverted into the pipeline at the Pipeline Diversion on West Mosby Creek. Pipeline flows are best measured with a water meter. As a regulatory agency, we allow the water users to decide what water measuring device they elect to use. However, based on our experience, certain types of water meters work much better than others. We recommend installing a meter that we have confidence in and experience with (that we specify and Respondent purchases) that will connect with our database/website. If Respondent purchases such meter and installs a suitable meter vault (meter installation requires we have access to the exterior circumference of the pipe) within in a suitable location, our staff will (1) help find a suitable meter location, (2) install the new meter in the meter vault with radio telemetry and (3) assist with the operation of the water meter. These meters cost more than some of the other water meters on the market, but they also perform better and last longer than other meters so they are one of the most economical options available to Respondent and that is why we recommend it for Respondent's pipeline diversion.
3. The Lance Luck No. 2 East Side Ditch located on the east side of Mosby Creek just upstream of the Treaty Line Road is not functioning properly due to sediment accumulation in the ditch. There is minimal sediment in the flume, but it appears a lot of sediment has passed through the flume and has reduced the capacity of the downstream channel. The flume needs minor cleaning of sediment, but the ditch below the flume needs to be cleaned or the elevation of the flume needs to be increased so there is a vertical drop of about 4 inches or more in water surface elevation on the downstream side of the flume with respect to the water level on the upstream side of the flume when the flume itself is level.
4. Please periodically inspect all flumes used to measure the water delivered to Respondent, and keep these flumes clear of debris, vegetation, and/or sediment or other items that may interfere with obtaining an accurate flow measurement. Respondent's efforts to maintain accurate water measuring devices are important to the overall operation of the distribution system.
5. **Please complete any necessary flume cleaning within the next 30 days. Please submit Respondent's plans to improve the control structure and measuring device**

**on West Mosby Creek for review and discussion at Respondent's earliest convenience, but no later than September 3, 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) 247-1514*

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 3rd day of July, 2013



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

cc: Robert Leake, Regional Engineer  
Tyler McKee, Deep Creek Water Commissioner  
Chris Walker, Mosby Irrigation Company

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 3rd day of July, 2013, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

**Robert Nilsen**  
**5467 Sheffield Avenue**  
**Powell, OH 43065**

**Brad Zimmerman**  
**12601 Enramada**  
**Tustin, CA 92780**

**Shawn Bradley**  
**3 Rivers Ranch At Paradise Cove LLC**  
**606 East Sunny Flowers Lane**  
**Murray, UT 84107**



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)

Shawn Bradley  
3 Riv Ranch  
606 E. SunnyFlowers Ln  
Murray UT 84107

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7/3/13

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PS Form 152, May 2002

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# 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)

Brad Zimmerman  
12601 Enramada  
Tustin CA 92780

Postmark  
Here

7/3/13

**POSTAL CUSTOMER:**  
Keep this receipt. For Inquiries:  
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Robert Nilsen  
5467 Sheffield Ave.  
Powell, OH 43065

Postmark  
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