

June 18, 2003

Russell Albrecht, President
Mark Truman, Vice President
Larry E. Maycock, member
Rocky Ford Irrigation Company

Re: Storage in Three Creeks Reservoir and Beaver River Distribution

Gentlemen:

In response to your letter of May 14, 2003, we have reviewed the Beaver River Decree (1931) and the amended Beaver River Decree (1943), the water rights on record in our office, and the agreement attached to your letter.

The State Engineer was not party to the Agreement. Although he did approve the several change applications which contributed to implementation of the Agreement, interpretation of the contract to resolve a dispute between the parties would likely be reserved to the parties or to the District Court.

However, in response to the questions raised in your letter, our review of the water rights indicates that the provisions of the agreement appear to be in harmony with the water rights. The following are our responses to your questions:

Is the flow that was changed from direct flow to storage supposed to be added to the flow in the Beaver River to determine when the flow reaches 161.31 CFS at the measuring gauge in the mouth of Beaver Canyon?

Yes. According to change applications 77-181(a2752), 77-182(a2753), 77-183(a2754), and 77-184(a2755) and numbered paragraph 7 of the Agreement, after April 1 (when storage may begin under Kents Lake's decreed rights) any flow of water stored in lieu of direct flow rights by Kents Lake's stockholders would reduce the amount of flow required before storage is allowed under the decreed rights of Kents Lake.

When does the right to store water begin according to the different water classes of A - B - and C water and can they only store water when the combined flow in Beaver River and the water being diverted for storage equals the 161.31 CFS or can they store water before it reaches the 161.31 CFS?

First, the use of "A, B and C" tends to cloud the issue because not everyone agrees as to what those designations mean. It makes for a clearer answer to use the priority dates used in the Beaver River Decree, i.e., 1870, 1890, 1903, etc.

For the “**decreed**” storage (Water Rights 77-37, 408, 1662) in Three Creeks, storage is limited by the Beaver River Decree and the 1953 Agreement to:

- A. The period of April 1 through June 30, and
- B. Periods when the flow at the Beaver River gauge at the mouth of the canyon is equal to or greater than 161.31 cfs minus any flows being stored in lieu of direct flow rights.

Example: On April 15, the flow at the gauge is greater than 161.31 cfs and Kents Lake is diverting 20 cfs of direct flow into storage at Three Creeks. Kents Lake can continue to store in Three Creeks until the flow at the gauge drops below 141.31 cfs (161.31 - 20). At that point, they can no longer store under their “**decreed**” right, but can continue to store under the direct flow right(s) up to the limits of those rights.

I hope this information will be helpful to you. If you have further questions please contact Lee Sim, Assistant State Engineer for Distribution, by phone at (801)538-7380 or by e-mail at LEESIM@UTAH.GOV.

Sincerely,

Jerry D. Olds, P.E.
State Engineer

cc: Lee Sim, Assistant State Engineer
Kerry Carpenter, Regional Engineer
Kents Lake Reservoir Company
Ron Roberts, Water Commissioner