



**SUNRISE ENGINEERING INC.**

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**WATER RIGHTS  
CEDAR CITY**

February 7, 2002

Mr. Kerry Carpenter, Regional Engineer  
Division of Water Rights/Southwestern Region  
585 North Main Street  
P.O. Box 506  
Cedar City, Utah 84721-4231

Re: Request for Explanation – Red Creek Hydro (Parowan City) – WR#'s 77-108 and 77-122

Dear Mr. Carpenter:

The Application for a New License for the Red Creek Hydro (FERC No. 2782-UT) has been submitted to, and accepted by, the FERC. That Agency's reviewer has asked me to provide information as follows:

"We need a copy of the canal company's water rights – interested in what you mean about to divert water is against the law."

In the Application, in a discussion on the natural hydrograph, I wrote:

"There are at present no bypass flow, flushing flow, or instream flow requirements associated with this Project, and it must be re-iterated that the Applicant/Owner does not own any water rights which would permit the plant operator to bypass any water past the diversion structures, beyond a normal flow in excess of the capacity of the penstock. Parowan City owns only a non-consumptive power generation right (see water rights in Appendix 2); this means that the Project can divert its right and run it through the generator, and then return it to the Creek for the use of the next right-holder on the drainage, Paragonah Canal Company. For the operator to go to the diversion structure and bypass part of the flow would constitute an illegal use (read "stealing") [of] someone else's water, because the bypass would never get to the rightful owner. Only through cooperation of the Applicant with the Canal Company was the plant built, and that is how it is kept in operation. The benefit to the Canal Company for allowing the diversion of its water from the natural channel for power generation, is water conservation. If a continual bypass flow were mandated in the new license, it would almost certainly close the Project down permanently.

To say it another way, the Applicant has no operational flexibility to operate the plant in such a way as to allow stream flows that follow a natural hydrograph."

To get back to a natural hydrograph would also require that Red Creek Reservoir be permanently

breached, which of course would run against every principle of beneficial use and water conservation that has been established in the State. In my opinion, the historic flood flows prior to the construction of the Reservoir have had more effect on the state of the riparian habitat on the main branch of Red Creek than the penstock bypass.

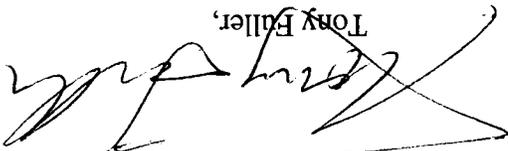
I don't think the mere reading of the Paragonah Canal Co. water rights versus the Parowan City water rights will provide the information needed for someone not familiar with Utah Water Law to properly understand the crux of this matter.

I have found that you possess considerable skill in providing enlightenment to those not familiar with the peculiar jargon of water law. Consequently, I am requesting that you respond with a short summary of the regulations of the State Engineer that apply to this situation.

I would like to forward your response, along with the requested copy of the water right(s), to the FERCC and well as other involved agencies (BLM, Forest Service, Fish and Wildlife Service).

If you have any questions, please feel free to call me at 435 743-1143.

Sincerely,



Tony Fuller,

Project Manager

Parowan City

Pc: Mr. Clark Gates, II, City Manager