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State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

March 29, 2012

Re: Lower Beaver River Distribution Issues

To the Lower Beaver River Water Users:

In response to concerns expressed by water users on the Beaver River below Patterson Dam, I would like to address several issues regarding distribution of the water. As a division we understand the importance of this resource in relation to your livelihoods and your way of life. We are committed to managing the resource in accordance with law and sound management principals. We also want to work with all who have concerns and we appreciate the cooperation and input we have received.

1967 Distribution Memorandum

The 1967 Distribution Memorandum was written to formalize an agreement made between the various water users below Patterson Dam and the State Engineer's Office. The Agreement was to operate on a trial basis for the years 1967 through 1969. Water users were instructed to contact the state engineer if they wished a review of procedure *within that trial period*. There are no provisions in the memorandum that extend the agreement beyond 1969.

It is true that the distribution of the Lower Beaver River since 1969 has incorporated some of the elements of the agreement – but not all of them. The agreement specifies that the commissioner would report monthly diversion totals for all companies to the Area Engineer for analysis. These monthly totals were to be examined in order to determine how much water, if any, that Rocky Ford could make up during the period from October 15 to October 31. These reporting and analysis provisions of the agreement have not taken place for quite some time.

Rocky Ford Irrigation Company has expressed that they do not want delivery of their water rights as has occurred since the expiration of the 1967 Agreement. Instead, they have requested that their water be delivered in accordance with the legal definitions of their various water rights. Since there is no agreement currently in place the State Engineer is obligated to honor this request. This letter serves as notice that distribution of water on the Lower Beaver River in 2012 and subsequent years will be in accordance with the legal definitions of the various water rights. Future changes in distribution (similar to the agreement of 1967) will have to be accomplished by a new agreement and, likely, with accompanying change or exchange application(s) properly filed and approved by the State Engineer.

Beaver River Decree

The Beaver River Decree was first signed in 1931 by Judge LeRoy Cox. There have been several minor amendments since that time. The decree set out the current method for distributing the water. Among the many provisions in the decree is the following: “That the users from the Beaver River below the Patterson Dam shall not be entitled to demand any water from above said dam during the irrigation season from April 1st to October 31st until the rights herein decreed to the users from said river at and above said dam have first been satisfied. . .”

It was fairly common practice at that time for courts to give upper users on river systems the senior right to use water. This was because flood irrigation by upper users would benefit the lower users in the form of return flows later in the season when the natural stream flow was diminished. Now that historical irrigation practices have changed and irrigation can now be more efficient, lower users on many river systems in the state are finding that their water supply is less than it has been historically.

Unfortunately there is no simple way to rectify this situation. The State Engineer is obligated to distribute water in accordance with the 1931 Beaver River Decree even though conditions have changed substantially since that time. There are really only two ways to change this. The first option would be to obtain a new court decree that supercedes the Beaver River Decree and changes the provisions for distributing the water. This would probably require a re-adjudication of the water rights on the Beaver River. A re-adjudication is not likely in the near future because the division currently has a limited number of staff that could be dedicated to this effort.

The other option would be for the all the water users on the Beaver River (those who divert from the river above Patterson Dam and those who divert below the dam) to enter into a stipulated agreement that described new provisions for distributing the water. If all water users agreed to a different distribution of water than that decreed by the court then the State Engineer could regulate on the basis of that agreement.

Distribution During Low Flow

Concern has been expressed that at times the flow in the river is so small that dividing it up so that half is diverted into canals and the other half left in the channel to flow to Minersville Reservoir would make it impossible or very difficult to irrigate. One possible way to address that problem is for the commissioner to divide the river by turns so that for half of the days the entire river would flow to Minersville Reservoir and for the other half of the days the river would be entirely diverted by the canal users. This “turns” method may be implemented this year if it is determined by the commissioner that it would be a more efficient way to distribute the available water. Another possible solution would be for all of the water users to come together on a new distribution agreement.

Change Applications

Some water users have asserted that a water right that is transferred should be assigned a new priority date based on the date of the change. That is not the policy of this office, nor does statute or case law support that idea. The priority dates of the various water rights on the Lower Beaver

River were established by the court in the 1931 Beaver River Decree and can only be changed by a new court decree.

Regarding the water rights which have been changed for use on Beaver Mountain, state statute allows water rights to be used at either the heretofore place of use (along the Beaver River) or the hereafter place of use (Beaver Mountain) until the change application is perfected and a certificate is issued. The water can only be used in one place at a time but it can be used in either place. It is our understanding that the uses for the water have not been developed on Beaver Mountain and the water rights are not yet being used at that location. Therefore, the water rights can still be used from their original points of diversion and no change is required yet in the distribution of the water.

In regard to the state engineer prohibiting transfers of water from one basin to another, in this instance all of the water rights at issue have long been established. The method for distributing the water was established by the court in the Beaver River Decree. Any change would require official action such as a new decree or a change or exchange application approved by the state engineer.

1953 Agreement Between Rocky Ford and Kent's Lake

The 1953 agreement between Rocky Ford Irrigation Company and Kent's Lake Reservoir Company (as well as the accompanying change application approval) indicates that direct flow rights diverted for storage into the mountain reservoirs is counted against the 161 cfs limit of withdrawal above the Patterson Dam. Kent's Lake also has water rights that allow them additional storage water in these reservoirs. The diversions into these mountain reservoirs will be monitored to ensure that water is diverted in accordance with established rights. The storage and release data will be made publicly available on our website soon after it is collected.

If you have any further questions regarding these issues, they might be best answered by Mike Silva, Distribution Engineer (801-538-7430 or MikeSilva@utah.gov); Kurt Vest, Regional Engineer (435-586-4231 or KurtVest@utah.gov); or Jared Manning, Assistant State Engineer for Field Services (801-538-7380 or JaredManning@utah.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jared Manning", with a long horizontal flourish extending to the right.

Jared Manning, P.E.
Assistant State Engineer

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