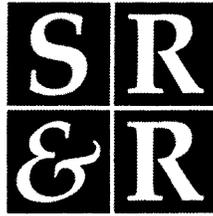


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March 28, 2013

Jared Manning
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SENT VIA EMAIL & USPS ONLY

RE: Rocky Ford Irrigation Company and 2013 distribution of Beaver River

Dear Jared:

In response to the letter dated December 20th, 2012 from your office regarding the operation of the Beaver River under the Interim Distribution Order, we respectfully submit this letter to emphasize Rocky Ford Irrigation Company's ("RFIC") position on distribution of the Beaver River during the 2013 irrigation season; particularly, storage in Kents Lake and Three Creeks Reservoir. Though we have concerns with the 2005 Interim Distribution Order, RFIC believes that if administered with proper and regular measuring and accounting it is acceptable for the 2013 irrigation season.

As you know, there has been real concern over the lack of administration of storage in the Beaver River in the past. As has been discussed numerous times, there is a need for more and more accurate measuring devices. More importantly, there is a need for appropriate administration. Given the fine nuances associated with the storage water rights, certainly administration must be done with detailed instructions, assistance and oversight by the State Engineer and those charged with administering the river (River Commissioner).

RFIC acknowledges and appreciates the State Engineer's recent efforts to remedy some of the past deficiencies in administration of storage in the upper Beaver River system. The following is an outline summary of the Upper Beaver River storage rights and the key elements in properly accounting for and administering storage. Based on our review of the 1931 Beaver River Decree and water rights on record with your office, the following is required:

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WATER RIGHTS
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1. Storage in Kents Lake – WR 77-4 and 77-407 (830 acre-feet)

- a. Storage in Kents Lake is subject to the following limits:
 - i. Storage period April 1 – June 30
 - ii. Kents Lake Reservoir Company (“KLRC”) can divert water for storage only when the flow of the Beaver River at the USGS gaging station at the mouth of Beaver Canyon is 164 cfs or greater.
- b. To properly administer this water right, there must be either an accurate measuring device located on the feeder canal above the reservoirs, or there must be accurate water elevation measuring devices in both Middle and Upper Kents Lake Reservoirs with reservoir capacity curves, and an accurate measuring device below Kents Lake to measure releases from Kents Lake.

2. Storage in Three Creeks Reservoir – WR 77-177 (830 acre-feet)

- a. Subject to the following limits:
 - i. Storage period April 1 – June 30
 - ii. KLRC can divert water for storage only when the flow of the Beaver River at the USGS gaging station at the mouth of Beaver Canyon is **164 cfs or greater**.
 - iii. Under this right and the 1943 Decree, KLRC can only store in Three Creeks Reservoir the amount of water which is “available” to Kents Lake Reservoir in the South Fork of the Beaver River, but which is not stored therein. To this end there is a need for an accurate measuring device on the South Fork of the Beaver River below the Kents Lake diversion.
- b. A regulation and accounting system must be put in place to assure that storage in Three Creeks Reservoir under this right only occurs under these conditions.

3. Storage in Three Creeks Reservoir – WR 77-408 (325 acre-feet)

- a. Subject to the following limits:
 - i. Storage under this this water right is limited to April 1 – June 30.
 - ii. Pursuant to change application a10423, storage in Three Creeks Reservoir is limited to the amount of water available on Merchant Creek up to 325 acre-feet.

- b. To our knowledge, there is no measuring device on Merchant Creek where it discharges to the Beaver River to determine whether or not the condition under 3(a)(ii) is being adhered to. Unless and until such measuring device is in place, storage should not be allowed under this water right.
 - c. Once an appropriate measuring device is in place, then a regulation and an accounting system must be put in place to assure that storage in Three Creeks Reservoir under this right only occurs under these conditions.
4. Storage in Three Creeks Reservoir – WR# 77-37 (1,193 acre-feet), priority 1940
- a. This right has a priority of March 8, 1940. It is based on an application to appropriate filed after the 1931 Decree. As such, it is subject to all senior water rights, including those below Patterson Dam.
 - b. A regulation and an accounting system must be put in place to assure that storage in Three Creeks Reservoir under this right only occurs when this priority is active.
5. Three Creeks Reservoir – WR#'s 77-181(a2752), 77-182(a2753), 77-183(a2754), 77-184(a2755) and 77-185(a2764) - 1193 acre-feet of storage in lieu of direct flow diversions.

The 2005 Interim Distribution Order clearly states the “approval of these change applications requires that all junior downstream rights (Direct Flow below Paterson) be first satisfied before water can be stored under these rights. RFIC believes administration of this condition under the Distribution Order has been neglected for years by the River Commissioner and the State Engineer’s Office.

- a. These five water rights are specifically limited to:
 - i. Storage from April 1 – October 31
 - ii. Priorities of the change applications:
 1. WR# 77-181(a2752) – December 22, 1956
 2. WR# 77-182(a2753) – July 28, 1953
 3. WR# 77-183(a2754) – November 10, 1961
 4. WR# 77-184(a2755) – July 28, 1953
 5. WR# 77-185(a2764) – August 29, 1953
 - iii. The change applications represent portions of other water rights, and diversion to storage can only occur if a like amount of diversion is not occurring at any instant under the natural flow diversions.

iv. These change applications are “***Subject to prior rights whether diverting directly from the source hereof or from other sources to which this water is tributary (including rights junior to the original application or rights which might be impaired by the change or changes) for diversion and use as herein described***” (Item 20 - State Engineer’s Endorsement page for respective change applications). The effect of such storage cannot impair other water rights, including junior water rights and water rights below Patterson Dam. A determination of such impacts must occur and storage under these rights, either through administering according to priority of change or otherwise, must occur in order to prevent other water users from being injured. RFIC’s conclusion therefore, is that storage in Three Creeks Reservoir under these five change applications can only occur under the respective priorities of their change applications.

b. A regulation and an accounting system must be put in place to assure that storage in Three Creeks Reservoir under this right only occurs when this priority is active.

6. Storage in Three Creeks Reservoir – General

a. Three Creeks Reservoir is located on the Three Creeks Lake Stream at the convergence of the North Fork and the South Fork of Three Creeks with Three Creeks Lake Stream.

b. We understand from the State Engineer that the reservoir company has had difficulty in fully measuring inflow to the reservoir.

c. The State Engineer has considered determining storage based on change in reservoir stage. In order for this to be accomplished:

- i. An accurate staff gage would be required on the reservoir,
- ii. An accurate area capacity curve would be required,
- iii. An accurate measuring device on the reservoir’s discharge would be required,
and
- iv. Frequent (daily) monitoring of change in stage would be needed.

d. Then, pursuant to the water rights listed above, a daily accounting of actual storage versus allowable storage (water rights) would be required to determine the required reservoir releases.

Jared Manning, Assistant State Engineer

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- e. Long-term averaging would tend to favor over-storage to the injury of other water rights.
- f. The River Commissioner must be required to take a more active role in monitoring, reporting and accounting for storage in the Upper Beaver River system.
- g. Data as to calculation of allowable storage and actual storage should be available during the irrigation season to allow other users to be assured of proper administration. This will require the River Commissioner, working under the direction of the State Engineer, to develop a system for real-time water right distribution and reporting. We would request that the State Engineer create a spreadsheet that is available to all users via the State Engineer's website, which is updated weekly containing the regular flow and storage measurements from the river commissioner.

Again, we appreciate your efforts and work to better understand and administer the waters of the Beaver River. Please let us know if we can be of assistance.

Respectfully,

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

Ben Ruesch, Esq.

cc: client; Barnett Water Consulting