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April 5, 2013

HAND DELIVERED

Mr. Kent L. Jones, P.E.
Utah State Engineer
Box 146300
Salt Lake City, Utah 84114

Re: 2005 Beaver River Interim Distribution Order – Reservoir Storage

Dear Mr. Jones:

We write on behalf of the Kents Lake Reservoir Company (“Kents Lake”) to seek clarification and direction as to how the Utah Division of Water Rights is conducting water distribution administrative proceedings regarding water storage in the upper Beaver River system under the 2005 Interim Distribution Order (“IDO”). The IDO was implemented by the Division after a lengthy administrative proceeding conducted in 2004 and 2005.

We also respectfully request that the “Draft Beaver River Commissioner Instructions for Distributing Water on the Upper Beaver River” (copy attached) as released by Jared Manning, Assistant State Engineer, on Monday, April 1st, not be issued. If any instructions are issued, they should conform with the implemented IDO and not disrupt the 60-year history of water storage and distribution on the upper Beaver River.

If the Division ever intends to modify the IDO, such modifications should not occur until proper administrative proceedings are conducted that provide all water users a fair opportunity to be heard. Otherwise, substantive property rights of Kents Lake will be unlawfully modified and affected. In sum, we request at minimum that for 2013 the status quo be maintained and that water be stored and distributed as it has been historically and under the IDO until pending litigation is resolved. In particular, since the IDO was implemented, no rights below Minersville Reservoir were satisfied first, before Kents Lake could store. The Draft Instructions change that very important portion of the IDO, and at Kents Lake’s expense.

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WATER RIGHTS
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Background

As you are probably aware, Rocky Ford has since the 1940's complained about Kents Lake water use. In 1953, the parties resolved their disputes and, as between them, settled on a distribution and storage plan that allowed Kents Lake to store in Three Creeks Reservoir ("1953 Agreement"). The 1953 Agreement has been followed since its inception.

During the first part of 2004, the Division of Water Rights ("Division") began administrative proceedings to review storage rights on the upper Beaver River, which resulted in the IDO. The process began after Rocky Ford Irrigation Company and Minersville Reservoir and Irrigation Company wrote to the Division in February 2004 requesting that the Division review the storage rights, measuring devices, and river commissioner regulation. A response was filed on behalf of Kents Lake on March 15, 2004.

Lee Sim undertook the effort to first understand the Beaver River system, and particularly the Rocky Ford and Kents Lake diversion and storage rights. After a series of proposals and meetings, on August 16, 2004, Mr. Sim issued a draft Interim Distribution Order and invited comment. On March 1, 2005, Jerry Olds signed and Lee Sim issued the final IDO to the interested parties. Over the next few weeks, a Report on Inspection of Measuring Devices was circulated, and some questions about the IDO were raised. On April 28, 2005, Mr. Sim wrote to the interested parties and addressed "some if not all of these questions."

The 1953 Agreement is an integral basis for the IDO. A central feature of both the Agreement and the IDO is the recognition of certain storage priorities between Three Creeks Reservoir and Minersville Reservoir. Paragraphs 3 and 4 of the Agreement explain the storage and diversion priorities that have been followed for 60 years.

After the IDO was implemented in 2005, Kents Lake stored water in accordance with the IDO in coordination with and under the direction of the Beaver River Commissioner.

Ongoing Litigation

Over five years later in 2010, Rocky Ford sued Kents Lake, alleging that the 1953 Agreement was invalid and seeking water storage priorities different than the IDO. Rocky Ford then sued, but never served, the Division, alleging negligence and other theories. During the course of discovery in the action against Kents Lake, Rocky Ford claimed that there was no final IDO, only an "unsigned draft." Rocky Ford has yet to explain how it could have believed that the IDO was not issued when it was involved intimately in the IDO's development and was sent a copy, and then later also received Sim's April, 2005 follow-up letter. That aside, Kents Lake has complied with the IDO.

The ongoing 2010 litigation directly addresses the 1953 Agreement and water storage priorities. In the six decades since it was signed, Kents Lake and Beaver City, to name just two,

have come to rely on the established diversions, storage and distribution. The City relies not only on some of the stored water for irrigation, but also depends on the water released from all storage for power generation. Every acre foot not stored is less power for the City.

Actions by the Division

In the course of the litigation it commenced, Rocky Ford enlisted the assistance of the Division, through Jared Manning, in addressing Rocky Ford's concerns or complaints about Kents Lake and/or the IDO. We do not know the full extent of the contact between the Division (Manning) and Rocky Ford, but it is evident that there have been important communications directly impacting Kents Lake storage rights that excluded Kents Lake.

On December 20, 2102, Mr. Manning wrote to the interested parties, stating among other things that the "state engineer implemented [the IDO]" on March 1, 2005, and that "some provisions [of the IDO]" were clarified on April 28, 2005. He also stated that "[i]n 2013 the river system will continue to be operated in accordance with the current distribution order." He further advised the parties "to partner" with the Division "to install automated record keeping (telemetry)" Kents Lake agreed. In January, 2013, Mr. Manning stated at a meeting in Beaver that the IDO would be followed as written for the 2013 irrigation season.

On Monday, April 1, 2013, Mr. Manning met at the Division with representatives of Rocky Ford, Kents Lake and Beaver City. There, Mr. Manning issued "Draft Beaver River Commissioner Instructions for Distributing Water on the Upper Beaver River." These "instructions" differ in several material respects from the implemented IDO, and particularly to Kents Lake's severe detriment. These instructions are such a departure from the IDO and over 50 years of operation under the 1953 Agreement that we are forced to write to ask that the process Mr. Manning has started be explained, refined and required to follow established procedures so as to ensure due process for all concerned. Simply put, what is being proposed upsets six decades of established Beaver River administration, to say nothing of the construction of a reservoir (Three Creeks) and the reliance of Kents Lake shareholders, including Beaver City.

In conversations with Mr. Manning prior to the April 1 meeting, he never explained that his view of the IDO required that rights below Minersville be satisfied before Kents Lake could store. The IDO has never operated that way, nor would Kents Lake have agreed to the IDO under those terms. Furthermore, even Rocky Ford never complained about the implemented IDO priorities between 2005 and when it filed the litigation.

Mr. Manning is allowing comment on the instructions by April 12. It is not clear what process has been underway. It is not clear what the purpose of the process is. It is not clear whether the IDO is under review, revision, implementation, or is to be withdrawn and replaced. It is further unclear whether the proposed changes are to be implemented immediately, with snowmelt already underway.

Our immediate concern is that the proposed instructions, issued on the very date that some storage rights kick in, are contrary to historic interpretations and water distribution practices on the Beaver River and further modify the IDO without any meaningful notice to or involvement by Kents Lake. Because the proposed modifications directly impact Kents Lake's ability to store, the instructions cannot be issued until a more defined administrative proceeding process is outlined by the Division with clearly stated objectives and parameters that will allow the Division to work with all water users, achieve finality and opportunity for judicial challenge.

If for 2013 it is the intent of the Division not to modify the IDO, then instructions should be issued that are in harmony with how water has been stored under the IDO. As pointed out above, Kents Lake has been told both in meetings and in writing that the Division has always planned to follow the IDO. Kents Lake agreed to cooperatively install the telemetry system with the Division with the understanding that in 2013 water would continue to be stored in Kents Lake storage reservoirs as implemented by the IDO.

The proposed instructions, however, modify the IDO in at least two material ways. First, under paragraph 1.a. of the Three Creeks Reservoir Water Rights, for the first time the storage of water in Three Creeks is subject to Rocky Ford's direct flow rights below Minersville. This entirely reverses decades of established order and the relative storage priorities established under the IDO as it has functioned since 2005. Kents Lake, in coordination with and under the direction of the river commissioner, has stored water in Three Creeks under the IDO and previous to that under the 1953 Agreement without such storage being subject to direct flow rights below Minersville.

Second, the 325 acre feet of water transferred from Twin Lakes to Three Creeks is now also subject to new restrictions directly impacting the ability to store the 325 acre-feet in Three Creeks, contrary to the IDO and water rights where no flow restrictions are imposed. In short, the IDO is not being "implemented." It is, rather, being changed, and dramatically so.

In addition, with litigation over the 1953 Agreement pending, and where that Agreement is such an integral part of the IDO, it makes no sense for the Division to intercede to change the flow, distribution and release regime that has so long existed and that was confirmed in the IDO just seven years ago. Unless, of course, the Division wishes to join that litigation. The Division may not be, as a legal matter, bound by the 1953 Agreement—because it is not a party—but the Agreement was adopted by the Division in the IDO. It is suspect for the Division to now undo what was so recently accomplished. Rocky Ford is bound by its agreement, and thus bound by the distribution plan it agreed to and that has been followed since 1953.

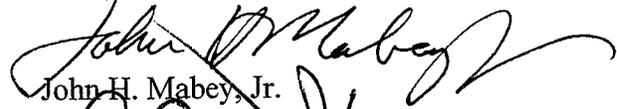
We ask, therefore that, if the Division intends to modify the IDO, the affected parties, including Beaver City, be engaged in a process that allows, like the process that led to the IDO, all interested parties to engage equally. There must be notice and an opportunity to be heard. So far, the Division has been less than forthcoming about its intent for the IDO, leaving Kents Lake having to react to events rather than being able to participate in them. Rules for substantive

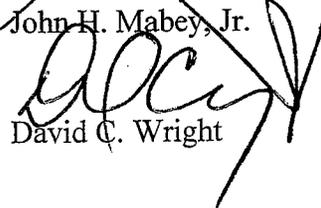
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comment, reasonable timing, meetings, drafts, and the implementation of the IDO need to be established. It is plainly too late to upend the IDO for 2013.

We welcome the opportunity to meet with the Division to discuss these matters further. We bring them to your attention now in the hope of establishing a fair process. Thank you for your consideration.

MABEY WRIGHT & JAMES, PLLC


John H. Mabey, Jr.


David C. Wright

Encl. – Draft Instructions

cc w/encl: Kents Lake Res. Co.
 Rocky Ford Irr. Co.
 Benjamin Reusch (counsel for Rocky Ford)
 Jared Manning, Utah Division of Water Rights
✓ Beaver City
 Justin Wayment
 Kurt Vest, Utah Division of Water Rights

Draft Beaver River Commissioner Instructions for Distributing Water on the Upper Beaver River

All cfs flow measurements refer to the USGS Gage at Beaver unless otherwise noted.

Direct Flow Water Rights Above Patterson Dam

1. **54 cfs** of 1870 direct flow (diversion period: April 1 to October 31). If the flow is less than 54 cfs then each 1870 water right receives a proportionate share of the water.
2. **73 cfs** of 1890 direct flow (diversion period: April 1 to October 31). The next 73 cfs of water (up to 127 cfs total flow) can be diverted by 1890 water rights. If the flow is less than 127 cfs then each 1870 water right receives its full share and each 1890 water right receives a proportionate share of the water above 54 cfs.
3. **34 cfs** of 1903 direct flow (diversion period: April 1 to October 31). The next 34 cfs of water (up to 161 cfs total flow) can be diverted by 1903 water rights. If the flow is less than 161 cfs then each 1870 and 1890 right receives its full share and each 1903 water right receives a proportionate share of the water above 127 cfs.

Three Creeks Reservoir Water Rights

1. **1,193 ac-ft** transferred from direct flow rights (storage period: April 1 to October 31)
 - a. These rights may only be exercised if Minersville Reservoir contains at least 7,500 ac-ft of storage and all direct flow rights below Patterson Dam are satisfied. Direct flow water rights above Minersville Reservoir amount to 40 cfs. Rocky Ford's direct flow rights are satisfied when the inflow to Minersville Reservoir is equal to or greater than the outflow, up to 110 cfs.
 - b. Three Creeks Reservoir may begin to store water under these rights when the flow is between 54 cfs and 127 cfs. Since the underlying rights have a priority of 1890, the amount of storage that may occur under these rights is in the same proportion as other 1890 direct flow rights above Patterson Dam.
 - c. When the flow exceeds 127 cfs then all 1890 direct flow rights above Patterson Dam are satisfied and Three Creeks Reservoir may store a maximum of 42 cfs, up to a total of 1,193 ac-ft.
 - d. Diversion into storage under these rights is added to the measured flow of the USGS Gage at Beaver for purposes of distribution.
2. **325 ac-ft** transferred from Twin Lakes (storage period: April 1 to June 30)
 - a. ~~When the flow is between 54 cfs and 127 cfs, Three Creeks Reservoir may begin to store water under this right. Since this storage right is equal in priority to 1890 direct flow rights above Patterson Dam, it may store water in the same proportion as the 1890 direct flow rights, based on a maximum storage rate of 3.6 ac-ft/day (325 ac-ft/91 days).~~
 - b. ~~Diversion under this right is limited to the amount of water flowing in Merchant Creek that could have been used to fill Twin Lakes.~~
 - c. When the flow exceeds 127 cfs, under this right Three Creeks Reservoir may store all excess water available, up to 325 ac-ft.
 - d. Once this right is filled, Three Creeks Reservoir must be held at a constant level unless or until other Three Creeks Reservoir storage rights are active.
3. **830 ac-ft** decreed storage transferred from Kent's Lake (storage period: April 1 to June 30)
 - a. This right is equal in priority to and may be exercised simultaneously with the 830 ac-ft of decreed Kent's Lake storage.
 - b. Under this right Three Creeks Reservoir may store water above 161 cfs, up to 830 ac-ft.

- c. Diversion under this right is limited to the amount of water measured on the South Fork below the Kent's Lake diversion.
- 4. **1,193 ac-ft** appropriation (storage period: January 1 to December 31)
 - a. This right will probably never be active between April 1 and October 31 because of its late priority
 - b. This right may be exercised between November 1 and March 31 when Minersville Reservoir is full.

Kent's Lake Water Right

- 1. **830 ac-ft** decreed storage (storage period: April 1 to June 30)
 - a. This right is equal in priority to and may be exercised simultaneously with the 830 ac-ft of decreed storage transferred to Three Creeks Reservoir.
 - b. Under this right Kent's Lake may store water above 161 cfs, up to 830 ac-ft.
 - c. Upper Kent's Lake has a conservation pool of 80 ac-ft which may be stored year-round.
 - d. Middle Kent's Lake has a conservation pool of 300 ac-ft which may be stored year-round.
 - e. The 830 ac-ft of storage under this right is in addition to the 380 ac-ft total conservation pool.

The total volume of storage under each storage right may not be exercised more than once each year.