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August 31, 2011

Kent L. Jones, State Engineer
Utah Division of Water Rights
1594 West North Temple, Ste. 220
PO Box 146300
SLC, UT 84114-6300

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Re: Rocky Ford Irrigation Company and Water Distribution of Beaver River

Dear Mr. Jones,

This office represents Rocky Ford Irrigation Company. I am sending this letter as a follow-up to several conversations held between representatives from the Division of Water Rights and my client, Rocky Ford Irrigation Company regarding measuring devices and water distribution on Beaver River. No doubt you are aware of the pending lawsuit between my client and Kents Lake Reservoir Company in Beaver County. Also, you are probably aware of the notice of claims (dated 2/14/11) I submitted on behalf of my client.¹ Rocky Ford has also engaged the services of Don Barnett to assist in preserving its water rights in Beaver River.

This letter has a few purposes, which I will briefly outline. First, a certain 1967 Water Distribution Meeting, held May 15, 1967, (hereinafter "1967 Water Distribution Meeting Agreement") regarding water distribution below the Patterson Dam, which I have enclosed for your review. Second, the need for a mapping and adjudication of the Beaver River. Third, the need for other measuring devices on the Beaver River distribution system.

Accordingly, as to the first issue, Rocky Ford has notified the Division of Water Rights at various times that it does not want to be obligated to the non-binding terms of that "agreement." This letter will serve as additional notice that Rocky Ford will not follow any "agreements" from the 1967 Water Distribution Meeting Agreement. Thus, Rocky Ford requests that the 1967 Water Distribution Meeting Agreement be reviewed and that a meeting be scheduled with all interested parties to address Rocky Ford's concerns with the distribution of Beaver River below the Patterson Dam. Please contact me at your earliest convenience with a time for this meeting.

As to the second and third issues, I believe that your office should undergo a mapping and pursue adjudication of the Beaver River, along with installation of another measuring device on the Beaver River. Rocky Ford has historically maintained the need for this to happen and the

¹ To date, Rocky Ford has not commenced litigation regarding these claims, with the hope that the matter may be settled amicably between Rocky Ford, yourself and the Division of Water Rights. If necessary, a mediation may also be in line, involving Kents Lake, but I would have to check with my client first regarding this latter possibility.

Division of Water Rights, Kent Jones

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pending lawsuit and lack of enforcement in the area is further evidence that the State should engage in this undertaking. Rocky Ford agrees with Mike Silva that another measuring device on the Beaver River should be installed and that the other ditches should pay for it.

I believe the state engineer's office should engage this matter and attempt to resolve the issues surrounding the Beaver River as soon as possible. I understand your office has limited resources and for this reason have advised my clients to seek assistance from Don Barnett, as previously mentioned (which they have done), to assist your office in this process. However, what Rocky Ford does not want to occur is a scenario where the Division of Water Rights fails to act timely before it must bring its claims through the litigation channel on or before April 2012 (which is when the statute of limitations may apply to these claims). Rocky Ford prefers to resolve the issues without resorting to expensive litigation.

Thus, would you (or someone from your office) please contact me at your earliest convenience to setup a time when Rocky Ford can meet and discuss these issues? I look forward to working with you to resolve this matter.

Sincerely,



Ben Ruesch, Esq.

Enc.

cc: Larry Maycock, President of Rocky Ford; Don Barnett; David Wright

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APPENDIX I

MEMORANDUM: For the Record
 SUBJECT: Water Distribution of Beaver River below the Patterson Dam
 BY: Donald C. Norseth

A meeting was held May 15, 1967 in the Beaver County Courthouse to discuss the distribution of water between the direct flow diversions on the Beaver River below Patterson Dam and Rocky Ford Reservoir Company's storage in Mindersville Reservoir. Those in attendance were:

<u>Name</u>	<u>Representing</u>
D. James Williams	Barton Ditch
Elser C. Johnson	Aberdare Bench Canal Company
Wm. H. Wood	Mindersville Reservoir & Irrigation Co.
Harold Bradshaw	Furnace Ditch Co. and South Ditch Co.
Clarence Gillins	Rocky Ford Board Member
Jeff Marshall	" " "
Clarence Rollins	Aberdare Bench Canal Co.
King Morris	Barton Ditch & Aberdare Canal Co.
Wallace Yardley	Beaver River Water Users
Allen Tibbals	Attorney - Rocky Ford
Stanley McKnight	President Rocky Ford
Hubert C. Lambert	State Engineer
Gerald W. Stoker	State Engineer's Office
Donald C. Norseth	" " "
Joe Melling	" " "
Lee Strong	Commissioner

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This problem of diversion operation has existed for many years.

Lee Strong presented the physical picture, pointing out that the diversions below Patterson Dam, after the high water period, depend for their water supply upon return flow to the channel below the Patterson Dam. This supply as measured at the Beaver River gage near Adamsville fluctuated considerably. To compensate for this fluctuation, gate adjustment is made but is difficult to accurately determine. To attempt a better operation, the following plan was adopted. This operation is to be without prejudice or precedence to any rights of any parties.

1. For 1967 during the low water period, the diversions (Barton, Aberdare, Emerson, Furnace, and Hay Ditches) would take all of the flow available. Rocky Ford deficiency would be made up during the last fifteen days of October. A good record will be kept to see if this arrangement is workable for the future.

- (a). The commissioner will calculate the deliveries to all ditches, including Rocky Ford Irrigation Company,

monthly on an acre-foot basis and submit them to Gerald Stoker, Area Engineer, for analysis. If it appears that Rocky Ford is being shorted significantly acre-foot wise, another look will be taken and other arrangements made for future operations.

2. In 1968 and the following year, if Item 1 proves satisfactory, the Rocky Ford Reservoir Company would take all water available and store it during the period from April 1 to April 15. During the period from April 15 to October 15, the direct flow users would take all water available to be used for irrigation. The use by the canals and storage by the Rocky Ford Reservoir Company during these periods would be calculated on an acre-foot basis and any storage to Rocky Ford Reservoir Company would be made up during the period of October 15 through October 31 of each year.

If at any time, any interest in this agreement wishes a review of procedure, they should contact the State Engineer or his representative and request the review. The State Engineer will then hold a meeting with all interested parties and recommend to all parties of any needed change.

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