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July 21, 2003

Mr. Mark Truman  
Vice President  
c/o Minersville Feed  
P. O. Box 49  
Minersville, Utah 84752

Re: Kent's Lake Irrigation Company and River Administration

Dear Mark:

I have enclosed a research memo to me from my associate attorney, Jim Alder, regarding his review of the decree, the amended decree, and the 1953 agreement between Rocky Ford and the Kent's Lake companies. He has also made a careful review of the State Engineer's files and the specific water rights files. The enclosed memo is an interim report addressing two issues: The effect of the 164 cfs limitation on Kent's Lake's storage rights, and whether Kent's Lake's direct flow rights must be included in the calculation at the USGS regardless of whether they are diverted to storage as opposed to being diverted into the canals of the water users involved. I have gone through his memo and also reviewed the back ground materials he used and I concur with his analysis of this situation. I hope this has responded to your immediate questions on storage.

You had also indicated you wanted to make a more comprehensive review of all of the water rights on the river itself, their respective priorities, and how the State Engineer appears to be administering the water rights on the upper river. While we have started this work, I have pulled Jim off for the time being to check and see how far the company really wants to take this. Jim has spent about 15 hours on this already, which gets us to about an \$1,875 dollar bill today, plus any expenses we have incurred for coping the State Engineer's files etc. I did not want to run up the national debt on you without making an interim check to see if you want us to do more at this point in time in terms of a more comprehensive look at the water rights on the Beaver River. Please let me know what you would like us to do in that regard.

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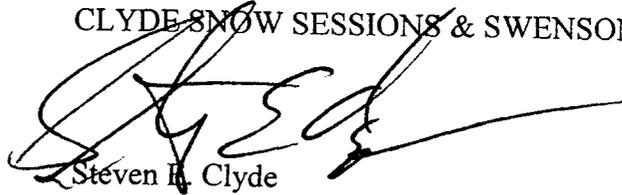
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Please let me know if you have any questions.

Very truly yours,

CLYDE SNOW SESSIONS & SWENSON, P. C.

A handwritten signature in black ink, appearing to read "Steven H. Clyde", written over the typed name below.

Steven H. Clyde

Enclosure

CC: James P. Alder, Esq.

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Priority	Water Right No.	Quantity	Owner	P.O.D.	Limitations
1890	77-407 (as originally decreed)	1660 a.f. Supp. irr. of 1920 acres  After a1413 -- 830 (200 - Beaver City)	Kent's Lake	Kent's Lake Reservoirs	-- Storage from 4/1 - 6/30 -- only after 161.31 cfs measured at gauging station -- must be included in calculation of cfs at gauge
1907	71-1948	31,900 a.f.	Rocky Ford	Minersville Reservoir	-- May not demand water from above Patterson Dam 4/1 - 10/31 until 161.31 cfs and storage rights of Kent's Lake are satisfied
April 22, 1938	a1413 (77-177)	830 Supp. irr. of 1920 acres	Kent's Lake	Three Creeks Reservoir	-- Storage from 4/1 - 6/30 -- Limited to that amount available from Kent's Lake Reservoirs minus 830 a.f. -- Only after 161.31 cfs measured at gauging station -- storage diversions must be included at calculation of cfs at gauge
Mar. 8, 1940	77-37	1193 a.f. (now 1163.345 a.f.) Supp. irr. of 1920 acres	Kent's Lake	Three Creeks Reservoir	-- Storage from 1/1 - 12/31 -- Subject to existing rights.
Post Mem. Agree. (1953)	Change applications on direct flow rights held by Kent's Lake stockholders anticipated by Mem. Agree. (?)	?	Kent's Lake stockholders	Three Creeks Reservoir	-- Storage up of direct flow rights up to 1193 a.f.

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## MEMORANDUM

TO: SEC  
FROM: JPA  
DATE: July 14, 2003  
RE: Rocky Ford Issue With Kent's Lake Reservoir Co.

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I was asked to review the water rights of the Rocky Ford Irrigation Company and those of the Kent's Lake Reservoir Company, and then investigate the administration of the Beaver River to determine how that river system should be operated.

The Beaver River decree of 1931 grants Kent's Lake an award for storage of 1660.0 acre feet of water for the supplemental irrigation of 1920 acres, which may be stored from April 1 to June 30 of each year. The priority granted to this award was 1890. This award was later divided between two water rights, 77-407 and 77-177, by change application a1413, filed on April 22, 1938. (This change application was available online if you spent a couple of hours viewing all of the scanned documents to find it, but was not linked to the water right information page, as is the norm. In retrieving a copy of this change, I also found that an additional change application, a3110, had been filed on this water right and was also not linked to the water right information sheet. I learned that a3110 had only been filed to provide an accurate point of diversion description. It was approved but no proof was ever filed.)

The 1931 Beaver River decree contains one limitation applying to Rocky Ford's diversion.

[T]he users from the Beaver River below the Patterson Dam [approx. 1 mile SW of Beaver] shall not be entitled to demand any water from above said dam during the irrigation season from April 1<sup>st</sup> to October 31<sup>st</sup> until the rights herein decreed to the users

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from said river at and above said dam have first been satisfied in the amount of 161.31 c.f.s. and until the storage rights of the Kent's Lake Reservoir Company and Beaver City in the Kent's Lake Reservoir and the South Bench Reservoir and Irrigation Company's storage right in Twin Lake Reservoir as herein decreed have first been satisfied;....

Change application a1413 moved one-half of Kent's Lake's storage right from the Kent's Lake reservoirs on the South Fork of the Beaver River to a new reservoir on the main stream of the Beaver River, called the Three Creeks Reservoir. The 830 acre feet of storage left in Kent's Lakes reservoirs is divided between the irrigation company (630 a.f. – 77-407) and Beaver City (200 a.f.). This change was protested and then litigated by Rock Ford and others (Rocky Ford Irr. Co. v. Kent's Lake Reservoir Co.), appealed to the Utah Supreme Court, and finally resulted in an amended decree from the Fifth District Court in November of 1943, approving the change application, but setting forth certain limitations.

The amended decree places the period of Kent's Lake storage from April 1 to June 30 of each year, but also states that

such right to store water may be exercised when and only when the flow of Beaver River at the government gauging station at the mouth of Beaver Canyon is in excess of a flow of 164 cubic feet per second and the Kent's Lake Reservoir Company is entitled to divert and store at the point above specified all water on the South Fork of Beaver River in excess of sufficient to maintain the flow of Beaver River at the government gauging station at the mouth of Beaver Canyon at a quantity of 164 cubic feet per second.

From this last clause of this sentence, it seems clear that Kent's Lake may exercise its storage rights only after the flow of the Beaver River measured at the USUG gage is 164 cfs. That requires that there is water in the stream in excess of 164 cfs before Kent's Lake may store, and that if the flow, as measured at the gage, drops below 164 cfs, Kent's Lake should be required to stop diverting into storage under its storage rights. I have not been able to ascertain the difference between the amended decree's provision of 164 cfs as the benchmark that must be reached before

Kent's Lake may begin storage diversions and the Memorandum Agreement's provision of a 161.31 cfs as the benchmark volume.

The Amended Decree also places a significant limitation upon Kent's Lake's storage of water in the Three Creeks reservoir is stated in the amended decree's next paragraph, which affirms the State Engineer's approval of Change Application a1413,

provided that the total flow of water [Kent's Lake] shall be allowed to divert into both said proposed Three Creeks Reservoir and its existing Kent's Lakes Reservoirs at any one time for storage purposes within the limits herein fixed shall never exceed a total amount equal to the flow then available to it under the limitations specified in the preceding paragraph hereof at the point of diversion from the South Fork of Beaver River therein described.

This was the main contention of Rocky Ford's protest – that Kent's Lake rarely realized a full 1660 acre feet from its Kent's Lakes Reservoirs, obtaining just as often no water at all from this source. Rocky Ford understood that the Three Creeks drainage was a more reliable source that would allow Kent's Lake to enlarge the average quantity of water it would be able to store. The court therefore limited it to the quantity of water it could have received under his historic points of diversion and also subjected it to the 164 cfs limitation.

In addition to the confirming the change application, the court confirmed the State Engineer's approval of A13420, in which Kent's Lake sought to appropriate an additional 1193 acre feet of storage from the Three Creeks source. This later-established water right (priority 1940) became No. 77-37. It is also used for the supplemental irrigation of the same 1920 acres that is served by 77-177 and 77-407. The amended decree explicitly states that an appropriation under 77-37 "shall be inferior and subject to all water rights existing in and to the waters of the Beaver River and its tributaries at the time such application was filed in the office of the State

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Engineer of Utah.” However, under this right, Kent’s Lake may store the 1193 acre feet over the course of the entire year, not just April 1 to June 30.

The Memorandum of Agreement followed in 1953. It confirmed the terms of the Amended Decree as to the requirement that there be a minimum flow of at the USUG gage before Kent’s Lake may divert under its storage rights. However, it states that the minimum flow is to be 161.31 cfs, rather than the 164 cfs from the Amended Decree. As mentioned above, we have no answer for this variance in flows. It further confirms the interpretation that the flow at the gage must measure 161.31 cfs before any diversion under Kent’s Lake’s storage rights may be made. The Memorandum also recognized that several of the stockholders of Kent’s Lake had direct flow rights and that they wanted to transfer them to storage in the Three Creeks Reservoir. The agreement acknowledged that this might be approved by the State Engineer but only so long as “Water Being diverted into storage in lieu of direct flow rights at Three Creeks after April 1<sup>st</sup> of each year shall be added to the flow of the river at the USGS measuring station at the mouth of Beaver Canyon to determine when the flow has reached or is above 161.31 cfs.” From this agreed upon language it seems clear that unlike Kent’s Lake’s storage rights, which require there to be a flow in excess of the 164 cfs measured at the gage before the company may divert into storage, the use of direct flow water diverted to storage is not dependant on the existence of this minimum flow at the gage, but it must be counted as part of the base or minimum flow of the river at the gage in order to determine when the flow at the gage reaches 161.31 cfs. Therefore, the measured flow at the gage is “inclusive” of the direct flow rights regardless of whether they are diverted into the canals or diverted into storage. If there is not enough water to meet the 161.31 cfs (or 164.cfs ) requirement at the gage, then Kent’s Lake may not divert water

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for storage under its storage rights in either the Kent's Lake Reservoirs or the Three Creeks Reservoir under its storage rights. If 161.31 cfs is reaching the gage Kent's Lake may divert at both reservoirs under 77-177 and 77-407, but the sum of both diversions may not exceed the total amount that could be produced – up to 1660 acre feet – from the Kent's Lake Reservoirs. If 161.31 cfs is calculated at the gage station and Kent's Lake has satisfied its storage rights, then Rocky Ford should be entitled to divert under its 1907 priority storage right, No. 71-1948. Once Rocky Ford satisfies its storage right, Kent's Lake may store under its junior priority storage right the additional 1163 acre feet of water in the Three Creeks Reservoir.

This appears to comply with the provisions of the Memorandum Agreement between the parties, although the Agreement makes no express mention of the limitation placed upon 77-177 that addresses the amount available from the Kent's Lake Reservoirs. However, there is nothing in the Memorandum Agreement that would waive or supercede any of the requirements or limitations of the Amended Decree.

I have not yet completed a review of the overall priorities of the river and a review of river administration in a more general way. Please let me know if the client wants us to proceed with this more comprehensive review of the river.