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September 23, 2004

VIA FACSIMILE

Mark Truman, President
Rocky Ford Irrigation Company
c/o Minersville Feed & Supply
P. O. Box 49
Minersville, UT 84752

Re: Decreed Water Rights Below Patterson Dam

Dear Mark:

In our last telephone conversation, you requested that I provide you with an analysis of the early water rights below the Patterson Dam as set forth in the 1931 Beaver River decree. The following analysis is based purely on my reading of the decree and does not contain any other analysis based on actual acres irrigated, amount of water actually used, forfeiture, change applications or other matters which may have changed the water rights since the decree was issued. For your reference, the decreed rights below Patterson Dam begin with Award No. 85 at Page 37 of the decree.

1. The earliest decreed rights below Patterson Dam carry a priority date of 1870. Other than the rights of Rocky Ford Irrigation Company (discussed below) the 1870 priority water rights below Patterson total approximately 40.76 cfs. These rights are in the names of Emma Yardley, Morris & Levi Ditch Association, Barton Ditch Association, Price & Thomas Ditch Association, Aberdare Canal Company, Charles Crawford, Fred Levi, South Ditch Company, Furnace Ditch Company and the Hay Ditch Company. These are all direct flow rights.

2. The water rights of Rocky Ford Irrigation Company are set forth in Award No. 96 beginning at Page 41 of the decree. Rocky Ford is awarded 9.67 cfs with a priority date of 1870 for the irrigation of 36,800 acres. This is a direct flow right. According to the decree, all or part of this 9.67 cfs was evidently purchased from the Furnace, Hay, South and Chaffin Ditches. In addition, the decree awards Rocky Ford an additional 31 cfs of direct flow with a priority date of 1870 for the same 36,800 acres. The decree indicates this right was acquired from Minersville Reservoir & Irrigation Company.

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3. Regarding the above-referenced 1870 rights of Rocky Ford, beginning at Page 41 of the decree, there is some discussion as to how the direct flow rights below Patterson Dam are to be prorated in times of shortage. The decree's prorata formula is fairly important to Rocky Ford's direct flow rights.

a. The decree first provides that during the time period between April 1 and June 1, if the flows of the river are insufficient to satisfy all of the 1870 decreed rights, then the 1870 rights are to be prorated between the various direct flow users. However, for the purposes of Rocky Ford's 31 cfs, that right, for that time period, is not to be entitled to prorate. After June 1, all of the 1870 rights are to be prorated, including the 31 cfs.

b. The above restriction on prorating between April 1 and June 1 does not apply to Rocky Ford's 9.67 cfs. In other words, between April 1 and June 1, if proration is necessary, you would add the other direct flow 1870 rights, including the 9.67 cfs of Rocky Ford and distribute the water prorata. It would not include the 31 cfs which, in effect, makes the 31 cfs slightly junior to the other 1870 rights, at least for the period between April 1 and June 1.

c. Further, after June 1, when all of the rights are prorated in total (including the 31 cfs), the decree allows for the additional diversion by all 1870 users of 4.5 cfs with the exception that Rocky Ford's 31 cfs is not to benefit from the additional 4.5 cfs. While this is complex, I believe the way it should work under the decree is that after June 1, if proration occurs, one would basically have to do two calculations. First, one would calculate the total decreed rights including both of Rocky Ford's rights to reach a certain figure. Then, a separate calculation would have to be done on all of the 1870 rights excluding Rocky Ford's 31 cfs. To that amount one would add 4.5 cfs to the pot for distribution to the parties.

4. The decree also awards two additional 1870 rights to J.L. Jackson and the town of Minersville for 1 cfs each. However, as I read the decree, these two awards are not included in any prorata distribution of the other 1870 rights.

5. In addition to the two 1870 direct flow rights awarded to Rocky Ford, paragraph 96 c-i sets forth the later priority rights of Rocky Ford and Minersville. The decree awards Rocky Ford two 1890 priority direct flow rights totaling 28.5 cfs. (See, Page 42 of the decree). The decree also awards Rocky Ford an additional 5 cfs of direct flow with a priority date of 1903.

6. The decree awards Rocky Ford 31,900 acre feet of storage from October 1 to June 30 of each year with a 1907 priority date. The decree next awards Rocky Ford 150 cfs direct flow from March 15 to July 1 with a priority date of 1907.

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7. The decree awards Rocky Ford an additional 20,000 acre feet of storage from October 1 to June 15 with a priority date of 1907. However, this water may not be stored at a rate of flow in excess of 100 cfs. Finally, the decree awards an additional 150 cfs of direct flow from May 1 to October 1 with a priority date of 1909.

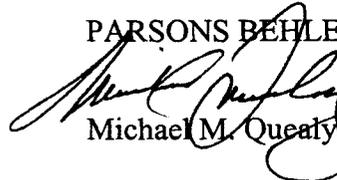
8. Regarding Minersville Reservoir & Irrigation Company, those rights are listed in Award No. 97 beginning at Page 44 of the decree. Minersville is awarded 7500 acre feet of storage from April 1 through October 31. Strangely, the decree neglects to state a priority date, but the state engineer's staff handwritten notes in the margin of the copy of the decree I have indicates an 1870 priority date. The state engineer's recent distribution order also lists the Minersville Reservoir storage right as having an 1870 priority date. As I read the decree, this right would not be included in the prorata formula discussed above.

I hope this answers your questions regarding the decreed priorities of water below Patterson Dam. I do not know how the Beaver River Commission has been distributing the rights below Patterson Dam. Upon review of this letter, if you have any further questions, please call and let's discuss them. It is a fairly complex issue.

Best personal regards.

Very truly yours,

PARSONS BEHLE & LATIMER



Michael M. Quealy

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