



A PROFESSIONAL
LAW CORPORATION

201 South Main Street
Suite 1800
Salt Lake City, Utah
84111-2218
Post Office Box 45898
Salt Lake City, Utah
84145-0898
Telephone 801 532-1234
Facsimile 801 536-6111
E-Mail: pbl@pbhtah.com

Michael M. Quenly

Direct Dial
(801) 536-6893
E-Mail
MQuenly@pbhtah.com

March 11, 2005

Jerry D. Olds
Utah State Engineer
Division of Water Rights
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, UT 84114-6300

**Re: Rocky Ford Irrigation Company/Minersville Reservoir & Irrigation
Company -Beaver River Meeting**

Dear Jerry:

Pursuant to our telephone conversation regarding the March 22, 2005 meeting with Rocky Ford and Minersville, I promised to get you our discussion items prior to that meeting. The following is a list of most of those items, although other items may come up at the meeting.

First, on behalf of myself and my clients, I want to express our appreciation for the study and work on this matter by Lee Sim, Kerry Carpenter and other staff members. We realize you are spread thin and have many other areas to deal with. We believe that the work done so far has put the Beaver River distribution system on a much clearer footing so everyone generally understands how the river will be regulated. This is of benefit to everyone.

I have received a copy of the updated Interim Distribution Order and based on my initial reading of it, it appears to be acceptable, subject to certain matters of clarification or questions set forth below. We particularly like the additional reporting requirements of the River Commissioner to adequately measure, account for and report river flows and storage, which we feel have been lacking in the past.

Our items for discussion include the following:

1. We would appreciate a brief report on the progress of Kent's Lake/Beaver City to install or repair the various measuring devices set forth in your order last fall. In particular, we believe the various important water storage levels in Three Creeks and Kent's Lake Reservoirs should be clearly marked to establish when certain blocks of water have

675492.1

RECEIVED
APR 26 2010
WATER RIGHTS
SALT LAKE

Jerry D. Olds
March 11, 2005
Page Two

been stored under the various rights. This is of particular importance to the total allowed storage in Three Creeks since, under the 1953 agreement, Three Creeks may only be filled once under any and all of Kent's Lake's storage rights. In addition, we have some concerns regarding the Kent's Lake outlet level. Is it set just down to the DWR conservation pool level – or can it completely drain the reservoir?

2. Regarding the Three Creeks "one fill" stipulation recognized in the distribution order and set forth in the 1953 agreement, we want to make sure we have an understanding of how this restriction will be monitored. For example, if Three Creeks fills before any storage water is released, the matter is relatively simple. Once filled, no additional water can be stored. However, if some water is stored, but not enough to fill Three Creeks, and then water is released before the reservoir fills, the measurements become more complex. As we see it, any water stored and released from Three Creeks before it fills should be counted against the total acre foot storage. If that is not monitored, Kent's Lake could exceed the total fill capacity of the reservoir and thus violate the "one fill" rule. This is particularly applicable to the Kent's Lake direct flow to storage applications which technically allow for storage during the entire irrigation season.

3. In the latest version (2/28/05) of the relative Beaver River priorities attached to the Interim Distribution Order, the block of text covering the Minersville storage indicates that when the upper Bear River flows exceed 161 cfs, the 7500 acre feet of Minersville storage is subordinate to storage in Kent's Lake and Three Creeks Reservoir. We believe this statement needs clarification as to which Kent's Lake and/or Three Creek storage rights are senior. It appears the 325 acre feet of storage from the old Twin Lakes right is indeed senior. We do have some uncertainty about the rest of the Kent's Lake storage rights. For example, the notes in the block text on the Kent's Lake direct flow storage rights indicate that those rights are subordinate to the Minersville storage because Minersville was not a signatory to the 1953 agreement. Further explanation as to how you see this would be helpful.

4. We would like to ensure that Kent's Lake and the river commissioner understand that regarding the 830 acre feet moved from the original Kent's Lake reservoir to Three Creeks, the water available for storage in Three Creeks is determined and measured by the amount of flows available for storage on the South Fork. While this is clearly set forth in the Distribution Order, we want to make sure it is enforced. Also, we have some questions on how the UP&L 10 cfs power right fits into this issue.

RECEIVED
APR 26 2010
WATER RIGHTS
SALT LAKE

5. We would like clarification from you regarding the direct flow rights below Patterson as they relate to the upstream storage rights when the flows of the Beaver River above Patterson are between 120 and 161 cfs (see for example block text relating to direct flow diversions). Perhaps the best way to address this is to use two or three hypothetical flow situations.

6. Regarding the Kent's Lake direct flow to Three Creeks storage, we want to ensure that these are accounted for by the river commissioner. For example, if the irrigators above Patterson decide to store 3 cfs in Three Creeks rather than take it as direct flow, we want to make sure the river commissioner make the proper cuts in delivery of the direct flow rights being placed into storage so there is no doubling up of water being diverted at either place. Further, we would request that the river commissioner, in his annual report, state the amount of direct flow water actually placed into storage.

7. As a general matter, we would also like to discuss water usage by Beaver City and other irrigators above Patterson. As you are aware, the flow regime set up on the Beaver River decree and the 1953 agreement all took place at a time when water users were flood irrigating. This resulted in more return flows to the river to satisfy the rights below Patterson. Now, however, most users are sprinkling. While this should result in less water being used above Patterson to offset the decrease in return flows, we are not sure that is taking place. While a recent study by David Hansen seems to indicate no appreciable increase in acreage above Patterson, my clients are concerned that the upper users, either through storage, direct flow diversion or the uses of supplemental wells, may be taking more than 4 acre feet per acre and we wonder whether that is being adequately monitored. Specifically:

a. Where wells are being used to supplement surface rights, are the wells being monitored and metered?

b. Does the river commissioner cut users back once they have diverted their full 4 acre foot duty?

c. We believe that due to the growth in Beaver City, it is using and/or being delivered more water than it is entitled to.

8. While most of the controversy over the past two years has dealt with storage controversies between the upper and lower basin, we believe there needs to be more accurate river regulation and measurement below the Patterson dam. We believe the headgates and measuring devices below Patterson are either inadequate or in disrepair.

Jerry D. Olds
March 11, 2005
Page Four

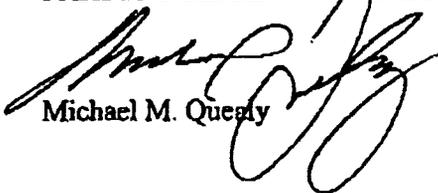
Mark Truman recently sent me an old 1968 agreement between Rocky Ford and various other users below Patterson dam, which was supposed to be an interim distribution plan for the lower river. It has evidently been continued ever since then without re-examination. That agreement seem to be based on the premise that everyone was flood irrigating, but now the users are sprinkling. We would like to discuss the possible re-examination of distribution issues on the lower river.

It is my understanding that the meeting is now set for Tuesday, March 22nd at 10:00 a.m. Prior to that time, if you or any of your staff have any questions regarding the discussion items set forth above, please feel free to call me. We appreciate your willingness to meet with us to discuss these issues.

Best regards.

Very truly yours,

PARSONS BEHLE & LATIMER



Michael M. Queaty

cc: Mark Truman