



May 8, 2013

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

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WATER RIGHTS
SALT LAKE

Re: *1967 Memorandum*

Dear Mr. Jones and Manning:

Please be advised that I recently met with members of the Lower Beaver River water users, including the Barton Ditch, Aberdare Bench Canal Company, Furnace Ditch Co. and South Ditch Co. regarding the decision of the State Engineer not to enforce the 1967 Memorandum Agreement issued by the Division of Water Rights. It is a serious concern. After discussing these matters with Bruce Brown who represents several of the Lower Beaver River Water Companies, I am submitting this letter in an attempt to address some of the issues and mounting tension which continues over distribution of these water rights.

Mr. Brown has expressed serious concerns regarding the Division of Water Rights (Jarred Manning) apparent disregard and cursory dismissal of the 1967 Memorandum Agreement ("Memorandum"), propounded by the Division of Water Rights. While I understand nothing was ever executed by the attendant parties, the lack of signatures does not necessarily denote that the terms are legally unenforceable. Furthermore, after reading the Memorandum, it is logically drafted by individuals employed by the Division of Water Rights in 1967 whom obviously had a working knowledge of the Beaver River Basin. The Memorandum is a fair and even-handed solution to the availability of water during the low flow periods. It was obvious that the intent of the Memorandum was to apportion the water in such a manner that the water could be put to beneficial use and without waste. It also assured that the down stream users, specifically Rocky Ford Irrigation Company ("Rocky Ford"), could be made whole at the beginning and end of each irrigation season to assure that it received its proportionate share of the water. The intent of the Engineer was obviously to make sure each party was treated equally and to make sure that the end user, who had the most likelihood of being impacted by low water flows, would receive a fair distribution of the water.

Now that Rocky Ford has elected not to follow an agreement that has been effective for over 40 years, it would appear that once again the Division of Water Rights seems to be favoring Rocky Ford to the detriment of all other users. This action is perplexing. Mr. Brown informed me that Jared Manning has asserted that the 1967 Agreement was only intended to last for three (3) years. I have read this Memorandum thoroughly and cannot find any such indication. It would also seem nonsensical. The reference to 1969 appeared to finalize the trial period, and, if satisfactory would continue thereafter; which it did for 40 years. It was obvious that the Memorandum had been studied for a considerable period of time and was drafted after numerous meetings, for the express purpose of facilitating a resolution. Specifically, after naming the individuals in attendance, the very first paragraph states that "This problem diversion operation has existed for many years." The next paragraph states "this agreement is being drafted to attempt a better operation and [sic] the following plan was adopted." It is obvious that the Division of Water Rights studied this matter carefully with people who were knowledgeable about the Beaver River Basin from personal experience rather than some other fashion. It is also apparent that all applicable parties were present and agreed to the plan. To now alter this agreement seems foolish.

Likewise, in reviewing the Cox Decree, 4.5 acre feet of water is added from June 1 to October 31 to determine the pro ration of water distribution during that period. Obviously this 4.5 acre feet was implemented, not because there was an actual 4.5 acre feet of water, but rather to make sure that the percentages continued to operate in such a manner that everyone was treated fairly in accordance with their respective water rights.

Based upon the foregoing, while the agreement is not actually executed, there is no reasoning as to why the Division of Water Rights would disregard the same when everything was effectively working without any justification of how water rights are not being properly administered by the Division of Water Rights. Why was such drastic action taken without conferring with the local water companies; even if such meeting must be chaperoned by the Sheriff's office? While I do not mean to criticize or degrade your office, Mr. Manning, or anyone else, we are all fully aware that water is a very volatile commodity that requires innate fairness and logical distribution. If those things do not occur, the Division of Water Rights office will always be embroiled in water disputes. The Memorandum seems to work very well and it would be careless to adjust that Memorandum at this juncture without submitting it to the Court for interpretation. The Division of Water Rights has such authority, if necessary.

If the Division of Water Rights deems it too late to reinstate the Memorandum, and find an equitable manner in distributing the water for the remainder of this season, this letter is a formal request that when the flow of the river is such that water is being wasted and lost due to insufficient head to reach the end user, that your office make the requisite "futile call" and permit the Lower Beaver Water Users to utilize the water. If Rocky Ford is going to be so foolish so as to impose a water distribution that benefits none and wastes water, after a second agreement was reached wherein again Rocky Ford backed out again, then such futile call should be made under

the authority granted your office pursuant to Utah Code Ann. §73-1-3. Without recitation of the same, I would suggest that there is an abundance of case law proposing that there is a rule of reasonableness whereby water may not be wasted when conducting the water from the main source to the point of use, and it cannot be lawfully wasted depriving others who could or would beneficially utilize the water. The extent of a person's use of water is the ability to place that water to beneficial use and if Rocky Ford is so loggerheaded as to demand water when the same reaches below 4.0 cfs at the furnace ditch point of diversion, then the call should be made and Rocky Ford can abide the foolishness of their decision and the consequences therefrom.

Finally, please be advised that if the Division of Water Rights is considering turns after June 1, then it will render the entire beaver river system of no beneficial use. When water is wholly removed from a ditch, it dries the ditch and a substantial amount of water is lost to seepage when turned back in the ditch. The same result occurs when the river has been dry. Moreover, it will wholly render the Barton Ditch users without any viable use because many of the users would be on a forty (40) day turn, thus drying up the pastures and crops effectively making the land useless. Utilizing water to irrigate dead grass, alfalfa, or any other crop because it has burned up is of no value. Watering pasture two times a season during the hot months is not a viable solution. Rocky Ford enjoys the benefit of a reservoir but 50 other upstream ranchers don't have that luxury. The Division of Water Rights is dealing with people's livelihoods and financial well-being, and altering administration of prior watering schedules should not be cursory decision to be swept aside at the whim of Rocky Ford.

Based upon the foregoing, please provide me a response as to what the Division of Water Rights intends to do with regard to this matter with sufficient time to advise my clients of their options.

Sincerely,



Justin W. Wayment
Attorney for Lower Beaver Water Users