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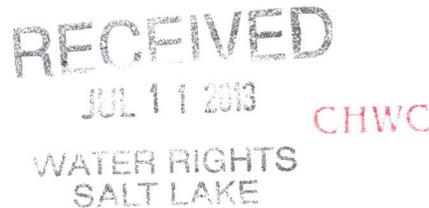
BRUCE A. MAAK

CLAYTON J. PARR
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July 11, 2013

Kent L. Jones, P.E.
State Engineer
UTAH DIVISION OF WATER RIGHTS
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, UT 84114-6300

Via Hand Delivery



Re: Distribution on the Beaver River below Patterson Dam

Dear Kent:

We represent Rocky Ford Irrigation Company (“**Rocky Ford**”) in relation to its water rights on the Beaver River. The Beaver River has, for many years, been fraught with significant disputes over water rights, delivery, and use. One primary area of concern has been distribution during low flow of Class A water below Patterson Dam to the Aberdare Ditch, the Barton Ditch, the Emerson Ditch, the Furnace Ditch, the South Ditch and the Hays Ditch (collectively the “**Lower Beaver Users**”), and to Rocky Ford, which likewise owns Class A direct diversion rights from the lower Beaver River (not to be confused with Rocky Ford’s storage water rights). As with other distribution issues on the river, concerns with distribution below Patterson Dam stem from (1) the complexity of the Beaver River Decree and other relevant documents and (2) the lack of adequate measuring devices, reporting, and regulation. Rocky Ford is very appreciative of the efforts of the Division of Water Rights (the “**Division**”) and its staff over the past few years to better understand the water rights on the system and to improve the measuring devices. But notwithstanding these efforts, Rocky Ford has been deprived of significant amounts of precious water due to the Beaver River Commissioner’s failure to implement directions from the Division and due to the Lower Beaver Users’ refusal to timely comply with those directions.

BACKGROUND

Rocky Ford delivers water to thousands of acres of land in Beaver County and, with its predecessors, has done so since at least 1870. In 1931, Judge LeRoy H. Cox entered the Beaver River Decree in *Hardy v. Beaver County Irrigation Co.*, Civil No. 625, Fifth Judicial District Court (Nov. 13, 1931) (the “**Decree**”). The Decree outlined in great detail how the water below Patterson Dam should be distributed, but it did not prevent distribution concerns. Indeed, in 1967, Rocky Ford and the Lower Beaver Users worked with the State Engineer to try a different approach to distribution which included Rocky Ford taking all the water before April 15th and after October 15th and the Lower Beaver Users taking all the water from April 15 to October 15. This method of distribution was “to be without prejudice or precedent to any rights of any parties,” and “[a] good record [was to be] kept to see if this arrangement is workable for the future.” (Memorandum from Donald C. Norseth to the Record regarding Water Distribution of Beaver River below the Patterson Dam, memorializing May 15, 1967 (the “**1967 Memorandum**”), attached as **Exhibit A**). Although distribution ostensibly occurred for many years under the 1967 Memorandum and in spite of many statements of concern from Rocky Ford, virtually no records were kept to assess whether Rocky Ford was being treated fairly by this arrangement. Indeed, there is no indication that this arrangement was critically reviewed by the Division until last year.

As a result of that critical review and Rocky Ford’s request to discontinue distribution under the 1967 Memorandum, the Division notified Rocky Ford and the Lower Beaver Users that water would be delivered during the 2012 irrigation season “in accordance with the legal definitions of their various water rights.” (Memorandum from Jared Manning regarding Lower Beaver River Distribution Issues, March 29, 2012 (the “**2012 Memorandum**”), attached as **Exhibit B**.) The Division then issued a Measuring Device Notice to Rocky Ford to install a measuring device at the inlet to Minersville Reservoir and a Measuring Device Notice to the Lower Beaver Users to install a measuring device on the Beaver River near Greenville. Rocky Ford installed a permanent weir at a location acceptable to the Division and arranged for installation of measurement telemetry. The Lower Beaver Users installed a temporary weir that “involve[d] metal panel sections wrapped with tarps and placed in front of fencing ‘T’ posts.” (Memorandum from Mike Silva to Bruce Brown regarding SEAA 1439, dated October 24, 2012.) The Division noted that “[t]here was visible leakage on both . . . sides of the weir structure, causing some concern about the relative accuracy of the structure,” and that the Division would not activate telemetry “until a more sustainable weir structure can be established.” (*Id.*)

The Lower Beaver Users expressed displeasure on numerous occasions with the Division and the 2012 Memorandum’s termination of distribution under the 1967 Memorandum. In addition to the written and verbal expressions of displeasure, the Lower Beaver Users also took, or acquiesced in, actions that prevented proper distribution of the Beaver River and deprived Rocky Ford of significant water resources. On July 7, 2012, Jared Manning inspected and adjusted the Lower Beaver Users’ head gates to properly distribute water according to the Decree. Before these adjustments, Rocky Ford was receiving very little water, but within a short time of Mr. Manning’s adjustments, significant flows began flowing to Rocky Ford. The Lower

Beaver Users were so upset with the adjustments, that the Sheriff was needed to keep the peace. The proper allocation did not last long, however, as the headgates were somehow again adjusted such that flows to Rocky Ford were drastically reduced. Rocky Ford has photographic evidence of major and consistent discrepancies between the numbers reported by the Beaver River Commissioner, Steve Gale, and those observed at the Lower Beaver Users' measuring devices. These discrepancies are detailed in a series of tables attached as **Exhibit C**. The discrepancies continued during 2013, invariably favoring the Lower Beaver Users. Even with the extra water deliveries, the Lower Beaver Users were not satisfied. Indeed, some time before July 26, 2012, the Lower Beaver Users, or some of them, without a stream alteration permit from the Division, deposited fill material in the Beaver River channel to prevent water from continuing in the channel and reaching Rocky Ford. Pictures of the illegal dam are attached as **Exhibit D**.

On May 29th of this year, Division staff met with the Lower Beaver Users and Rocky Ford to discuss options for a new distribution method to address some of the distribution problems below Patterson Dam. At that meeting there was general agreement for distribution during the 2013 season according to the following main principles: first, the total quantity of water delivered to each water user during the irrigation season was to equal the quantity they would have received under the Decree; second, the Lower Beaver Users could elect to begin taking all of the water at some point during the season; third, the Division would estimate when the Lower Beaver Users must allow all water to flow to Rocky Ford to achieve the Decree-based-quantity allocation by the end of October; and fourth, accurate measuring devices and telemetry would be installed at the head of each of the Lower Beaver Users' ditches (telemetry was by this time already in place at the inlet of the Minersville Reservoir). The parties did not ultimately sign an agreement with these terms, but the terms were largely adopted as part of the Division's distribution instructions to Mr. Gale. (Letter to Steve Gale from Kent Jones, June 26, 2013 (the "**2013 Instructions**"), attached as **Exhibit E**.) The Lower Beaver Users originally refused to allow implementation of the 2013 Instructions, but elected on July 2, 2013 to begin taking all of the water, presumably agreeing to the 2013 Instructions' method of allocation. To date, however, no telemetry has been installed on the Lower Beaver Users' ditches, and the measurements taken by Mr. Gale have been inconsistent and, in many cases, inaccurate.

ANALYSIS

Rocky Ford has not received its decreed, first-priority, direct flow water rights during 2012 and 2013, and the Division must take action to remedy these shortages and prevent future shortages. Utah Code section 73-5-3 provides that "[t]he state engineer shall divide . . . the water . . . among the several appropriators entitled thereto in accordance with the right of each respectively, and shall regulate and control . . . the use of such water by such closing or partial closing of the head gates, caps, valves or other controlling works of any . . . means of diversion as will prevent the . . . use in excess of the quantity to which any appropriator is lawfully entitled." As further discussed below, the Division has not fulfilled this obligation below the Patterson Dam because (1) the measurements taken are neither accurate nor transparently reported; (2) even if the measurements were accurate, they still evidence that the Lower Beaver Users are, to Rocky Ford's detriment, receiving water in excess of their decreed rights; and (3)

the 2013 Instructions do not remedy these shortages and Mr. Gale is not, and has historically failed in, properly implementing Division directives.

1. Inaccurate Measurements

One of the best ways to ensure compliance with water rights limitations is to ensure accurate and transparent measurements, but such measurements have been lacking on the Lower Beaver Users' ditches. As an initial matter, the care with which the Lower Beaver Users have installed measuring devices is obviously suspect. For example, the weir installed in response to the Division's notice in State Engineer Administrative Action 1439 was already leaking on both sides shortly after installation, and the Division determined that activating the telemetry it installed would be of little value because of that inaccuracy. Indeed, that weir has since washed out without any replacement, leaving no basis at all for measurement at that point.

Furthermore, Mr. Gale's measurements have not inspired confidence. Since the beginning of the 2012 irrigation season, the daily measurements entered by Mr. Gale at the ditches have varied considerably from what others have observed at those same ditches. For example, on June 4, 2013, the observed flows and reported flows are set forth in the table below.

Station	Observed Flow (cfs)	Reported Flow (cfs)	Difference (cfs)
Barton Ditch	2.32	1.5	0.82
Aberdare Ditch	3.44	3	0.44
South Ditch	1.39	0.3	1.09
Furnace Ditch	0.93	1	-0.07
Emerson Ditch	1	0.2	0.8
Totals	9.08	6.00	3.08

Thus, on June 4, 2013, Mr. Gale was underreporting the flows to the Lower Beaver Users by more than 33%. In every other instance where measurements have been taken, similar errors have been observed that invariably disadvantage Rocky Ford. (See Exhibit C.) Indeed, Mr. Gale has, on average, reported only about half of the flows delivered to the Lower Beaver Users. Because the flow directed to Rocky Ford depends on the flow reportedly diverted by the Lower Beaver Users, these measurement errors result in a direct and significant reduction in the amount of water allowed to flow to Rocky Ford. In other words, these measurement errors result in deliveries to the Lower Beaver Users "in excess of the quantity to which [the Lower Beaver Users are] lawfully entitled." *Id.*

To prevent continued unlawful diversion by the Lower Beaver Users, the Division must take action to ensure the accuracy of the measurements at the ditches. One option for verifying the measurements is for the Division to make unannounced visits to conduct its own measurements and compare them with reported numbers. On July 7, 2012, Jared Manning made such a visit and adjusted headgates to conform to the Decree. As a result of that visit, Rocky Ford experienced a significant increase in the flows it received. Because the headgates were not locked, however, this increase in flow to Rocky Ford's rightful direct flow amount was short-lived. Shortly after Jared Manning left Beaver County, the headgates were adjusted such that

Rocky Ford's flows were again significantly less. Now that the Lower Beaver Users have elected to take the entire flow of the river, an inspection is necessary to allow for more accurate accounting of the quantity of water that must be replaced to Rocky Ford later in the year.¹

An even better way to ensure accuracy and transparency is to promptly install telemetry on each of the ditches. Each of the ditch companies agreed to such telemetry at the May 29th meeting, but there have been unwarranted delays in the installation. This is not surprising, because there is no incentive for the Lower Beaver Users to install telemetry, which will only make it easier to quickly and accurately document their overuse of water. The Division, however, has ready access to each of the headgate areas for telemetry installation under Utah Code sections 73-2-20 and 73-5-3. Indeed, section 73-2-20 contemplates that the Division will install "equipment" and makes it a crime to tamper with such equipment. Similarly, under section 73-5-4, the Division is fully empowered to require the Lower Beaver Users to install measuring devices, and the Division enjoys great latitude in determining the nature and type of measuring device required as well as a deadline for doing so. Thus, to fulfill its duty under section 73-5-3 to prevent excess diversions by the Lower Beaver Users, the Division should promptly install telemetry at each of the ditches. The need for such action grows more severe with each passing day of this irrigation season.

2. Rocky Ford Has Not Received Its Decreed Share of Beaver River Flows

Even assuming Mr. Gale's reported measurements at the ditches are accurate, those measurements prove that a significant portion of Rocky Ford's water rights have been illegally diverted by the Lower Beaver Users. Attached as **Exhibit F** is a table listing the daily reported measurements and calculating the difference between the quantity actually delivered to Rocky Ford and the amount it was entitled to under the Decree. Based on the Commissioner's own measurements during June alone, more than 30 acre-feet of water that should have been delivered to Rocky Ford was delivered to the Lower Beaver Users. This is a significant amount of water that could have been delivered to Rocky Ford shareholders already struggling through drought conditions. Indeed, with alfalfa currently selling for roughly \$240/ton, each acre-foot unlawfully delivered to the Lower Beaver Users rather than Rocky Ford results in lost revenue of approximately \$360. Thus, even assuming only the shortage proved by Mr. Gale's own numbers, Rocky Ford shareholders lost more than \$10,000 during June 2013 alone. Of course, when the shortages resulting from the measurement discrepancies noted in Part 1 are considered, the revenue lost swells to more than \$35,000.

In addition to the shortages based on the measurements, Exhibit D also illustrates the problem resulting from measuring Rocky Ford's allocation at the Furnace Ditch or as an average of flows passing the Furnace Ditch and the flows at the inlet to Minersville Reservoir. The difference to Rocky Ford during June of calculating the flows as an average of those two locations is 5.5 acre-feet of water. There is no justification in the Decree or otherwise for

¹ The turn schedule set forth in the 2013 Instructions is in no way ideal for Rocky Ford, but Rocky Ford has decided not to challenge most aspects of those instructions. One significant problem is that the dam is in need of maintenance work later this year that may require draining the reservoir. Thus, water delivered at the end of the present irrigation season could be of little use to Rocky Ford.

calculating Rocky Ford's allocation at any other point than the inlet to Minersville Reservoir. The Decree provides that the proration is to occur "when the flow of the Beaver River at and including the place of diversion of the Barton Ditch . . . down to a point in said river above the highest point of the backwater of the Rocky Ford Reservoir." (Decree at 41-42.) The Decree must be interpreted to not render portions thereof superfluous. Calculating Rocky Ford's allocation based on an average between the Furnace Dam and the inlet renders the specific language quoted above superfluous—proration is not based on the points identified by the Decree but on some other artificial point. Use of the average also essentially taxes Rocky Ford with a disproportionate share of the system losses below Furnace Dam. This is at odds with how system losses are taxed to the Lower Beaver Users and is inconsistent with the practice on virtually every other system in the state. The Division should therefore calculate Rocky Ford's share based on delivery at the inlet to the reservoir.

3. The June 26, 2013 Instructions and Corrective Action Plan

The 2013 Instructions provide for a turn schedule with essentially two turns—one for the Lower Beaver Users and one for Rocky Ford. The start of Rocky Ford's turn is determined so that on October 31, each has received its decreed share of the river. Rocky Ford has been willing during 2013 to acquiesce to this method of distribution in principle even though distribution pro-rata as provided in the Decree would likely be of greater benefit to its shareholders. But one major problem with the 2013 Instructions is that shortages prior to June 26, 2013, which are undisputed based on the Commissioner's own measurements, are completely ignored. There is no provision for replacing the excess water taken by the Lower Beaver Users. Additionally, as discussed below, Rocky Ford has serious concerns with Mr. Gale and does not trust that he will be able to fairly determine the date when Rocky Ford's turn should begin this year. The Division should issue revised instructions that account for the shortages, establish that Rocky Ford's allocation is measured at the inlet to the reservoir, and clarify that the Division will determine when Rocky Ford's turn should begin later this year. Without these changes, Rocky Ford will consider formal legal action to correct and remedy the improper water allocation for 2013.

Many of the problems with distribution below Patterson Dam stem from Mr. Gale's failure to properly measure flows and adjust headgates. The Division has elected to delegate its authority and responsibility under Utah Code section 73-5-3 to Mr. Gale, but the Division may not fully escape this duty nor stand idly by while Mr. Gale fails to fulfill his duties. As noted above in Part 1, there are serious questions about the accuracy of Mr. Gale's measurements. Furthermore, the shortages based on even Mr. Gale's measurements illustrate that he has not diligently adjusted headgates to correctly distribute the water. Rather, it appears that Mr. Gale simply takes a rough measurement at the top of the system, sets headgates according to that measurement and then ignores the shortages at the bottom of the system where Rocky Ford diverts its equal priority direct flow rights. Given the numerous problems to date with Mr. Gale's actions as Commissioner, the Division should impose a corrective action plan where Mr. Gale is required to show real improvement. If he does not meet the corrective action plan, then Mr. Gale should be removed for cause under Utah Code section 73-5-1(4)(a). Ultimately, if distribution under Mr. Gale does not significantly improve, Rocky Ford will have no choice but to bring an action in district court for his removal under section 73-5-1(4)(b).

CONCLUSION

Rocky Ford desperately needs your immediate help. Rocky Ford is counting on you and your office to correctly carry out the water distribution practices that only your office is authorized to do. Rocky Ford appreciates the work that has been done so far by Jared Manning, but much more remains to be done, and it is up to your office to do it. Each day of inaction is causing Rocky Ford a substantial amount of damage. As an end user on the system, Rocky Ford's only hope for relief (short of litigation, which none of the parties prefer) is prompt and decisive action by you and your staff, including your representative, Mr. Gale.

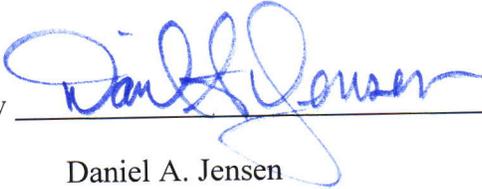
For the reasons discussed above, Rocky Ford requests that the Division take the following actions:

1. Make an unannounced visit to confirm measurements on each ditch, with unannounced follow-up visits as necessary;
2. Install telemetry as quickly as possible on each of the ditches, regardless of the level of non-cooperation by the lower ditch companies;
3. Amend the 2013 Instructions to (a) recognize and replace the shortages suffered by Rocky Ford from June 1 to June 26, 2013, (b) calculate Rocky Ford's delivery share based on the measurement at its weir, and (c) provide for the Division to make the determination of the start date for Rocky Ford's 2013 turn; and
4. Impose a corrective action plan on Mr. Gale that requires that he improve or be removed.

Thank you again for the progress that has been made on the Beaver River below Patterson Dam. If you need any further information or have any questions regarding these issues, please do not hesitate to contact either of us.

Respectfully yours,

PARR BROWN GEE & LOVELESS

By 

Daniel A. Jensen

Matthew E. Jensen

Attorneys for Rocky Ford Irrigation Company

Cc: Rocky Ford Irrigation Company
Jared Manning, P.E.
Justin Wayment

A P P E N D I X 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
Elmer C. Johnson	Aberdare Bench Canal Company
Wm. H. Wood	Minersville 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

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,

Cont. - Water distribution of Beaver River below Patterson Dam, P. 2

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 I 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.

DCN/wh



GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

MICHAEL R. STYLER KENT L. JONES
Executive Director State Engineer/Division Director

March 29, 2012

Re: Lower Beaver River Distribution Issues

To the Lower Beaver River Water Users:

In response to concerns expressed by water users on the Beaver River below Patterson Dam, I would like to address several issues regarding distribution of the water. As a division we understand the importance of this resource in relation to your livelihoods and your way of life. We are committed to managing the resource in accordance with law and sound management principals. We also want to work with all who have concerns and we appreciate the cooperation and input we have received.

1967 Distribution Memorandum

The 1967 Distribution Memorandum was written to formalize an agreement made between the various water users below Patterson Dam and the State Engineer's Office. The Agreement was to operate on a trial basis for the years 1967 through 1969. Water users were instructed to contact the state engineer if they wished a review of procedure *within that trial period*. There are no provisions in the memorandum that extend the agreement beyond 1969.

It is true that the distribution of the Lower Beaver River since 1969 has incorporated some of the elements of the agreement – but not all of them. The agreement specifies that the commissioner would report monthly diversion totals for all companies to the Area Engineer for analysis. These monthly totals were to be examined in order to determine how much water, if any, that Rocky Ford could make up during the period from October 15 to October 31. These reporting and analysis provisions of the agreement have not taken place for quite some time.

Rocky Ford Irrigation Company has expressed that they do not want delivery of their water rights as has occurred since the expiration of the 1967 Agreement. Instead, they have requested that their water be delivered in accordance with the legal definitions of their various water rights. Since there is no agreement currently in place the State Engineer is obligated to honor this request. This letter serves as notice that distribution of water on the Lower Beaver River in 2012 and subsequent years will be in accordance with the legal definitions of the various water rights. Future changes in distribution (similar to the agreement of 1967) will have to be accomplished by a new agreement and, likely, with accompanying change or exchange application(s) properly filed and approved by the State Engineer.

Beaver River Decree

The Beaver River Decree was first signed in 1931 by Judge LeRoy Cox. There have been several minor amendments since that time. The decree set out the current method for distributing the water. Among the many provisions in the decree is the following: "That the users from the Beaver River below the Patterson Dam shall not be entitled to demand any water from above said dam during the irrigation season from April 1st to October 31st until the rights herein decreed to the users from said river at and above said dam have first been satisfied. . ."

It was fairly common practice at that time for courts to give upper users on river systems the senior right to use water. This was because flood irrigation by upper users would benefit the lower users in the form of return flows later in the season when the natural stream flow was diminished. Now that historical irrigation practices have changed and irrigation can now be more efficient, lower users on many river systems in the state are finding that their water supply is less than it has been historically.

Unfortunately there is no simple way to rectify this situation. The State Engineer is obligated to distribute water in accordance with the 1931 Beaver River Decree even though conditions have changed substantially since that time. There are really only two ways to change this. The first option would be to obtain a new court decree that supercedes the Beaver River Decree and changes the provisions for distributing the water. This would probably require a re-adjudication of the water rights on the Beaver River. A re-adjudication is not likely in the near future because the division currently has a limited number of staff that could be dedicated to this effort.

The other option would be for the all the water users on the Beaver River (those who divert from the river above Patterson Dam and those who divert below the dam) to enter into a stipulated agreement that described new provisions for distributing the water. If all water users agreed to a different distribution of water than that decreed by the court then the State Engineer could regulate on the basis of that agreement.

Distribution During Low Flow

Concern has been expressed that at times the flow in the river is so small that dividing it up so that half is diverted into canals and the other half left in the channel to flow to Minersville Reservoir would make it impossible or very difficult to irrigate. One possible way to address that problem is for the commissioner to divide the river by turns so that for half of the days the entire river would flow to Minersville Reservoir and for the other half of the days the river would be entirely diverted by the canal users. This "turns" method may be implemented this year if it is determined by the commissioner that it would be a more efficient way to distribute the available water. Another possible solution would be for all of the water users to come together on a new distribution agreement.

Change Applications

Some water users have asserted that a water right that is transferred should be assigned a new priority date based on the date of the change. That is not the policy of this office, nor does statute or case law support that idea. The priority dates of the various water rights on the Lower Beaver

River were established by the court in the 1931 Beaver River Decree and can only be changed by a new court decree.

Regarding the water rights which have been changed for use on Beaver Mountain, state statute allows water rights to be used at either the heretofore place of use (along the Beaver River) or the hereafter place of use (Beaver Mountain) until the change application is perfected and a certificate is issued. The water can only be used in one place at a time but it can be used in either place. It is our understanding that the uses for the water have not been developed on Beaver Mountain and the water rights are not yet being used at that location. Therefore, the water rights can still be used from their original points of diversion and no change is required yet in the distribution of the water.

In regard to the state engineer prohibiting transfers of water from one basin to another, in this instance all of the water rights at issue have long been established. The method for distributing the water was established by the court in the Beaver River Decree. Any change would require official action such as a new decree or a change or exchange application approved by the state engineer.

1953 Agreement Between Rocky Ford and Kent's Lake

The 1953 agreement between Rocky Ford Irrigation Company and Kent's Lake Reservoir Company (as well as the accompanying change application approval) indicates that direct flow rights diverted for storage into the mountain reservoirs is counted against the 161 cfs limit of withdrawal above the Patterson Dam. Kent's Lake also has water rights that allow them additional storage water in these reservoirs. The diversions into these mountain reservoirs will be monitored to ensure that water is diverted in accordance with established rights. The storage and release data will be made publicly available on our website soon after it is collected.

If you have any further questions regarding these issues, they might be best answered by Mike Silva, Distribution Engineer (801-538-7430 or MikeSilva@utah.gov); Kurt Vest, Regional Engineer (435-586-4231 or KurtVest@utah.gov); or Jared Manning, Assistant State Engineer for Field Services (801-538-7380 or JaredManning@utah.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jared Manning", with a long horizontal flourish extending to the right.

Jared Manning, P.E.
Assistant State Engineer

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Exhibit C
Lower Beaver River Measurements

May 29, 2012	Observed Flow (cfs)	Reported Flow (cfs)	Difference (cfs)
Barton Ditch	3.62	3.00	0.62
Aberdare Ditch	4.30	4.00	0.30
South Ditch	No Reading*	2.00	N/A
Furnace Ditch	1.93	1.00	0.93
Emerson Ditch	0.80	0.50	0.30
Total	12.65	10.50	2.15
Underreporting	17%		

July 26, 2012	Observed Flow (cfs)	Reported Flow (cfs)	Difference (cfs)
Barton Ditch	2.90	1.50	1.40
Aberdare Ditch	1.82	1.00	0.82
South Ditch	1.23	0.10	1.13
Furnace Ditch	0.42	0.10	0.32
Emerson Ditch	1.19	0.10	1.09
Total	7.56	2.80	4.76
Underreporting	63%		

June 5, 2012	Observed Flow (cfs)	Reported Flow (cfs)	Difference (cfs)
Barton Ditch	3.40	1.50	1.90
Aberdare Ditch	4.10	2.00	2.10
South Ditch	No Reading*	1.00	N/A
Furnace Ditch	2.05	1.00	1.05
Emerson Ditch	0.60	0.30	0.30
Total	11.15	5.80	5.35
Underreporting	48%		

August 2, 2012	Observed Flow (cfs)	Reported Flow (cfs) (8/1/12)	Difference (cfs)
Barton Ditch	3.17	1.50	1.67
Aberdare Ditch	4.31	1.20	3.11
South Ditch	0.95	0.10	0.85
Furnace Ditch	0.42	0.10	0.32
Emerson Ditch	0.51	0.10	0.41
Total	9.36	3.00	6.36
Underreporting	68%		

June 22, 2012	Observed Flow (cfs)	Reported Flow (cfs)	Difference (cfs)
Barton Ditch	0.47	0.75	-0.28
Aberdare Ditch	1.82	0.50	1.32
South Ditch	0.64	0.50	0.14
Furnace Ditch	2.32	0.30	2.02
Emerson Ditch	0.35	0.10	0.25
Total	5.60	2.15	3.45
Underreporting	62%		

June 4, 2013	Observed Flow (cfs)	Reported Flow (cfs)	Difference (cfs)
Barton Ditch	2.32	1.50	0.82
Aberdare Ditch	3.44	3.00	0.44
South Ditch	1.39	0.30	1.09
Furnace Ditch	0.93	1.00	-0.07
Emerson Ditch	1.00	0.20	0.80
Total	9.08	6.00	3.08
Underreporting	34%		

Average Underreporting	49%
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* For purposes of totals, Observed Flows are assumed to equal Reported Flows when no reading was taken.









GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Water Rights

KENT L. JONES
State Engineer/Division Director

June 26, 2013

Steve Gale
Beaver River Water Commissioner
PO Box 855
Beaver, UT 84713

RE: Distribution on the Beaver River below Patterson Dam

Commissioner Gale:

Thank you for your continuing work and dedicated effort in distributing water on the Beaver River. We know there are difficult issues you are dealing with. The purpose of this letter is to give you instructions regarding distribution on the lower river below Patterson Dam for the remainder of 2013.

In order to allow for the most efficient and equitable use of water under the various water rights, a turns system will need to be implemented for the remainder of the year. To accomplish this the following processes and procedures are to be immediately implemented:

- The direct flow users' will get a single turn which begins on the date of this letter. During the duration of their turn, the direct flow users shall have the right to divert all water above Furnace Dam.
- With the assistance of division staff, you will choose a cut-off date that represents the end of the direct flow users' turn and the beginning of Rocky Ford's turn. Rocky Ford's turn will last until October 31, 2013. The cut-off date will be chosen to equitably divide the water according to the rights of the direct flow users and Rocky Ford.
- In accounting for water under this system, any water diverted by the direct flow users in excess of their rights will be credited to Rocky Ford. Any water foregone by the direct flow users will be charged to Rocky Ford. Accounting is to be done on a daily basis through October 31, 2013 and begins on the date of this letter.

These processes and procedures apply only to 2013. Diversions shall commence in the spring of 2014 according to the priority schedule based on the 1931 Beaver River Decree unless an agreement is in place at that time. If you have any questions regarding these instructions, please contact Jared Manning or Kurt Vest.

Sincerely,

Kent Jones, P.E.
State Engineer



Beaver River Below Patterson Dam 2013

Date	Aberdare Ditch Total (cfs)	Abedare total minus 1.19 cfs* (Awards 53 & 85a)	Abedare total minus 1.0 cfs* (Award 86a) - if 0.19 not prorated	Barton Ditch Total (cfs)	Barton Ditch minus 0.47 cfs* (Award 86a)	Emerson Ditch (cfs)	Furnace Ditch (cfs)	South Ditch (cfs)	Haye Ditch (cfs)**	Total Flow above Furnace Dam (cfs)	Total AF Div. above Furnace Dam (AF) - minus full 1.66 cfs	Passing Furnace Dam (cfs)	Total AF Passing Furnace Dam (AF)	Inflow at Inlet to Minersville (cfs)	Total AF Div. Inflow at Inlet to Minersville (AF)	Average Passing Furnace & at Inlet (AF)	Total Decreed Flow June 1 - Oct. 31 (cfs)	Lower User %	RFIC %	
Decreed flow (cfs) to be prorated June 1 - Oct. 31	14.82			7.70		3.43	8.32	3.07	1.86	39.20				41.63			80.83	48.50%	51.50%	
6/1/2013	3.00	1.81	2.00	1.50	1.03	0.50	1.10	0.40	0.20	4.84	9.68		0.00	2.15	4.30	2.15				
6/2/2013	3.00	1.81	2.00	1.50	1.03	0.50	1.10	0.40	0.20	4.84	9.68		0.00	2.37	4.74	2.37				
6/3/2013	3.00	1.81	2.00	1.50	1.03	0.20	1.00	0.30	0.00	4.34	8.68	4.30	8.60	3.93	7.86	8.23				
6/4/2013	3.00	1.81	2.00	1.50	1.03	0.20	1.00	0.30	0.00	4.34	8.68	4.30	8.60	3.58	7.16	7.88				
6/5/2013	3.00	1.81	2.00	1.50	1.03	0.20	1.50	0.30	0.00	4.84	9.68	4.30	8.60	3.13	6.26	7.43				
6/6/2013	3.00	1.81	2.00	1.50	1.03	0.20	1.50	0.30	0.00	4.84	9.68	4.30	8.60	2.51	5.02	6.81				
6/7/2013	2.60	1.41	1.60	1.30	0.83	0.20	1.30	0.30	0.00	4.04	8.08	4.30	8.60	3.28	6.56	7.58				
6/8/2013	2.60	1.41	1.60	1.20	0.73	0.20	1.20	0.20	0.00	3.74	7.48	4.30	8.60	3.76	7.52	8.06				
6/9/2013	2.60	1.41	1.60	1.20	0.73	0.10	1.20	0.20	0.00	3.64	7.28	4.00	8.00	2.29	4.58	6.29				
6/10/2013	2.60	1.41	1.60	1.20	0.73	0.20	1.20	0.20	0.00	3.74	7.48	3.00	6.00	1.89	3.78	4.89				
6/11/2013	2.00	0.81	1.00	1.00	0.53	0.10	1.00	0.20	0.00	2.64	5.28	1.60	3.20	1.09	2.18	2.69				
6/12/2013	2.40	1.21	1.40	1.00	0.53	0.10	0.50	0.30	0.00	2.64	5.28	1.80	3.60	1.21	2.42	3.01				
6/13/2013	2.40	1.21	1.40	1.00	0.53	0.10	0.50	0.30	0.00	2.64	5.28	1.80	3.60	0.62	1.24	2.42				
6/14/2013	2.40	1.21	1.40	1.00	0.53	0.10	0.50	0.30	0.00	2.64	5.28	1.80	3.60	0.45	0.90	2.25				
6/15/2013	2.40	1.21	1.40	1.10	0.63	0.10	0.50	0.30	0.00	2.74	5.48	1.50	3.00	0.48	0.96	1.98				
6/16/2013	2.40	1.21	1.40	1.10	0.63	0.10	0.50	0.30	0.00	2.74	5.48	1.50	3.00	0.70	1.40	2.2				
6/17/2013	2.40	1.21	1.40	1.10	0.63	0.10	0.50	0.30	0.00	2.74	5.48	1.30	2.60	0.70	1.40	2				
6/18/2013	2.80	1.61	1.80	1.20	0.73	0.10	0.50	0.50	0.00	3.44	6.88	1.30	2.60	0.67	1.34	1.97				
6/19/2013	2.60	1.41	1.60	1.20	0.73	0.10	0.50	0.30	0.00	3.04	6.08	1.30	2.60	0.6	1.20	1.9				
6/20/2013	2.60	1.41	1.60	1.20	0.73	0.10	0.50	0.30	0.00	3.04	6.08	1.30	2.60	0.59	1.18	1.89				
6/21/2013	2.40	1.21	1.40	1.20	0.73	0.10	0.50	0.20	0.00	2.74	5.48	1.00	2.00	0.37	0.74	1.37				
6/22/2013	2.40	1.21	1.40	2.00	1.53	0.10	0.50	0.20	0.00	3.54	7.08	1.00	2.00	0.31	0.62	1.31				
6/23/2013	2.40	1.21	1.40	2.00	1.53	0.10	0.50	0.20	0.00	3.54	7.08	1.00	2.00	0.27	0.54	1.27				
6/24/2013	2.40	1.21	1.40	3.50	2.53	0.10	0.50	0.20	0.00	4.54	9.08	1.00	2.00	0.27	0.54	1.27				
6/25/2013	2.40	1.21	1.40	3.50	3.03	0.10	0.50	0.20	0.00	5.04	10.08	1.00	2.00	0.27	0.54	1.27				
6/26/2013	2.40	1.21	1.40	1.00	0.53	0.10	0.50	0.20	0.00	2.54	5.08	1.00	2.00	0.25	0.50	1.25				
6/27/2013	2.40	1.21	1.40	1.00	0.53	0.10	0.50	0.20	0.00	2.54	5.08	1.00	2.00	0.25	0.50	1.25				
6/28/2013	2.40	1.21	1.40	1.00	0.53	0.10	0.50	0.20	0.00	2.54	5.08	1.00	2.00	0.24	0.48	1.24				
6/29/2013	2.40	1.21	1.40	1.00	0.53	0.10	0.50	0.20	0.00	2.54	5.08	1.00	2.00	0.23	0.46	1.23				
6/30/2013	2.40	1.21	1.40	2.00	1.53	0.10	0.50	0.20	0.00	3.54	7.08	1.00	2.00	0.21	0.42	1.21				
											137.52	AF	93.40	AF	70.82	AF	82.11	AF		

Manually Measured and reported by Commissioner

Manually Measured and reported by Commissioner

Electronically measured, recorded and reported at RF New RF Weir

Percent split using Furnace Dam as inflow to Minersville	66.01%	Lower Users	33.99%	RFIC	36.5
				AF Owed based on Inlet	-36.5
				AF Owed based on Passing Furnace Dam	-25.5
Percent split using RF weir as inflow to Minersville	59.55%	Lower Users	40.45%	RFIC	31.0
				AF Owed based on Average	-31.0

* Under BRD awards 85a and 86a, 1.47 cfs are not prorated with the other 1870 right on the Beaver River. The 0.19 cfs under award 53 is uncertain but is prorated for now.

** The Haye Ditch diversion is below the Furnace Dam and therefore is not included in the total diversion above the Furnace Dam.