



GARY R. HERBERT
Governor

SPENCER J. COX
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 24, 2014

Bruce Brown
P.O. Box 431
Beaver, UT 84713

Daniel A. Jensen
101 South 200 East, Suite 700
Salt Lake City, UT 84111

John H. Mabey, Jr.
175 South Main, Suite 1330
Salt Lake City, UT 84111

Justin W. Wayment
51 East 400 North, Bldg. 1
Cedar City, UT 84721

Re: 2014 Storage in Three Creeks Reservoir

Gentlemen:

We have received your respective letters regarding storage of water in Three Creeks Reservoir and have carefully considered your comments and concerns. Rocky Ford Irrigation Company ("Rocky Ford") asserts that water has been unlawfully stored this year in Three Creeks Reservoir and calls for it to be released to downstream users. Bruce Brown, purportedly representing the direct flow users below Patterson Dam exclusive of Rocky Ford ("direct flow users"), agrees with Rocky Ford that water in excess of 325 acre-feet should not have been stored in Three Creeks Reservoir this year, asserting that 162 cfs above Patterson Dam was never reached. Kents Lake Reservoir Company ("Kents Lake") states that water was stored under the direction of the river commissioner and in accordance with the 2005 Interim Distribution Order ("distribution order"). Beaver City also states that water was stored under the direction of the river commissioner and in accordance with the distribution order.

This disagreement calls into question what conditions must be satisfied before storage in Three Creeks Reservoir may occur under Kents Lake's direct flow water rights changed to storage ("change applications"). In response to the direct flow users, the distribution order does not require 162 cfs be in the river above Patterson Dam for storage to occur under the change applications. However, the distribution order does require direct flow rights below Patterson Dam be satisfied for storage to occur. This is at the heart of Rocky Ford's complaint since it has direct flow rights on the river which it asserts were not being satisfied this year when storage occurred under the change applications.



On its face, the distribution order could be reasonably construed as supporting Rocky Ford's contention that its direct flow rights must be satisfied before Kents Lake can exercise its change applications. However, it's important to consider the purpose of the distribution order and the conditions that existed at the time it was implemented. The State Engineer issued the distribution order primarily to address priority of storage on the Beaver River, not to direct distribution among the direct flow users. Distribution procedures relating to apportionment of direct flows between Rocky Ford and the direct flow users have changed since the distribution order was implemented. This should not be seen as a modification to the distribution order or as a change that affects the rights or obligations of Kents Lake in exercising its water rights. Kents Lake is not party to apportionment procedures below Patterson Dam and should not be impacted if those procedures change. Kents Lake is thus entitled to store water under its change applications as if the procedures relating to the apportionment of water below Patterson Dam in 2005 were still in place. In 2005 Kents Lake was obligated to allow the direct flow users—which did not include Rocky Ford at the time—to be satisfied while storage was occurring under its change applications. Those direct flow rights below Patterson Dam have a combined flow of about 36 cfs¹, but at times may have been satisfied by a lesser amount for various reasons including canal capacity limitations, variable demand, and flooding concerns. Under the principle that Kents Lake's storage rights cannot be affected by distribution procedures between other parties, Kents Lake has an obligation to allow up to 36 cfs be available to the direct flow users and has no obligation to allow Rocky Ford any amount of water in order to exercise its change applications.

It appears that storage this year in Three Creeks Reservoir under Kents Lake's change applications was done in accordance with the distribution order. Consequently, the State Engineer will not order water be released to downstream water rights.

Several water users have expressed a desire to revise the distribution order through a public process. We support a good faith effort to revise the distribution order, however we believe that the related, ongoing litigation needs to be resolved before that process is initiated. If there are specific procedural aspects of the distribution order that need to be clarified or defined in the meantime, we would be glad to work with the various interests to address those concerns.

Sincerely,



Kent Jones, P.E.
Utah State Engineer

cc via email: Don Barnett
Scott Clark
Matt Jensen
Larry Maycock
Jerry Olds
Julie Valdes
David Wright

¹ The water rights in Hay Ditch, which has not operated for several years, is not included in the total mentioned here.