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State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

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

August 9, 2017

Austin Mitchell
PO Box 118
Circleville UT 84723-0118
Via-email austinmitchell621@gmail.com

Re: Email correspondence from Austin Mitchell dated July 21, 2017

Dear Ms. Mitchell:

I received your email and read your account of recent events at your father-in-law's property. In the interest of coming to a common understanding of how the commissioner distributes water from the Sevier River, I hope the following information may be helpful.

2016 and 2017 irrigation season flows between Otter Creek and Piute Reservoirs differ from the historic practice. As you mentioned, flows between the reservoirs have historically ranged between 100-175 cfs in July. Since 2016, rather than running water continuously from Otter Creek to Piute, the commissioner has sent the water only when the owners of Otter Creek storage call for water to be released to Sevier Valley. Storage calls may be in quantities larger than 200 cfs. Delivering water in larger quantities when it is needed rather than running it continuously through Kingston Canyon minimizes transport and other losses. During the 2016 and 2017 irrigation season flows between the two reservoirs have been sufficient to fill the Kingston Irrigation Company's guaranteed water right of 20.8 cfs. Please see attached USGS measurement data. The water commissioner is responsible to deliver water in accordance with the water rights but is not legally limited to a particular flow rate in the reach of the East Fork of the Sevier River that flows through Kingston Canyon.

July 1, 2017 release - Upwards of 500cfs of water was released from Otter Creek Reservoir when the reservoir's gate caused large flows to pass through Kingston Canyon. Your father-in-law's dam and associated diversion structures were apparently unable to function properly under that flow condition. It is the water commissioner's practice to work with water users by providing notice when making large changes in flow. We intend to continue that practice to the best of our ability, but cannot guarantee flow conditions in the river.

73-5-4. Controlling works and measuring devices.
(8) Each water user shall maintain in workable and accessible condition all head gates, control structures, measuring devices and other equipment determined necessary by the State Engineer for the Commissioner's control, measurement and delivery of water.

(a) Measuring devices, head gates, and control structures shall be installed by and at the expense of the water user at each location determined necessary by the State Engineer.

(b) Measuring devices, head gates, and control structures shall be of a design approved by the State Engineer.

Veldon Mitchell Property - The USGS published data shows peak flows in Kingston Canyon have exceeded 500 cfs in 28% of years since 1913. Properly designed control structures should withstand flows of 500 cfs. Each water user is responsible to maintain properly designed facilities for diverting appropriated water. My staff inquired and learned of no water users in Kingston Canyon losing dams or headworks of a design approved by the State Engineer. Properly designed control structures would be capable of diverting the appropriated water from the river over the range of flows that may occur. Any crop loss in this timeframe, while unfortunate, appears to be due to failure of the controlling works to function properly rather than because of the flow conditions in the river. Kingston Irrigation Company's guaranteed water was in the river every day since the start of the 2017 irrigation season April 15th.

Liability - I have explained our practice that flows in the river can vary, and that design and construction of adequate facilities per statutory cite above is the responsibility of the water users. Please be aware that there is a process for any citizen to pursue a claim of liability against the State and you can find more information about that process by contacting The Utah Division of Risk Management at (801) 538-9560.

My staff stand ready to work with your father-in-law so the design of facilities he constructs will both withstand anticipated peak flows in the canyon and allow diversion of his appropriated water at minimum flows. For assistance with controlling works please feel free to contact our Regional Office at (435) 896-2557 or the Sevier River Distribution Engineer, Sue Odekirk at (801) 538-7431.

Sincerely,



Kent L. Jones P.E.
Utah State Engineer

Attachments

cc Russel Christensen, Upper Sevier River Commissioner
via-email rcfarm83@gmail.com
Kirk Forbush, Southeast Regional Engineer
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