

November 16, 1964

Mr. Allen H. Tibbals
Attorney at Law
Suite 604 El Paso Natural Gas Building
315 East Second South Street
Salt Lake City, Utah 84111

Dear Mr. Tibbals:

RE: BEAVER RIVER DISTRIBUTION

This acknowledges your letter dated November 3, 1964, in which you inquire concerning the storage of Minersville Reservoir & Irrigation Company and Beaver County Irrigation Company and its successor Rocky Ford Irrigation Company in the Minersville Reservoir.

After research of the records of this office the State Engineer has reached the conclusion that the Minersville Reservoir and Irrigation Company has a right to the first 7500 acre -feet of water in the Minersville Reservoir to be supplied by both summer and winter flows.

In examining the Beaver River Decree the statement that the Minersville Reservoir and Irrigation Company's right extends from April 1 to October 31, inclusive, does not necessarily infer a reference to storage but likely is a reference to the irrigation season. This period is modified in a later sentence in the same paragraph where it says that this right is subject to two contracts between the Minersville Reservoir and Irrigation Company and the Beaver County Irrigation Company dated April 30, 1913 and March 19, 1919. The 1913 contract contains the following language in paragraph 3:

The grantee covenants that it will construct and perpetually maintain and operate the said dam and reservoir and will acquire the legal right to impound in the said reservoir so constructed, among other waters, at least seven thousand five hundred acre feet of water annually and the grantor shall be entitled to an absolute, prior, first preferential right to the use of said seven thousand five hundred acre feet annually of said water so to be impounded in the said reservoir and the grantee further covenants that it will annually deliver from the said water so impounded in the said reservoir at the

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point in Beaver River at which the grantor now diverts water from Beaver River into its canal at which point of diversion the grantor has constructed and now maintains its diverting works, the said seven thousand five hundred acre feet annually, which water shall be delivered from time to time in such quantities as the grantor may from time to time during each year indicate; such water to be measured to the grantor through a proper weir of measuring device to be constructed in said canal at the intake thereof by the grantee, and the grantee shall construct and continuously maintain, at its own cost and expense, in the said Beaver River suitable works for the diverting of the said water through the said weir or measuring device into said canal.

These statements are reiterated again at the end of the contract where it states:

. the party hereto did reserve unto itself from such conveyance; (a) the prior, first and preferential right to use annually seven thousand five hundred (7500) acre feet of the total annual yield of said water rights, for beneficial irrigation and domestic purposes upon and in connection with the lands or its stockholders.

From the above quotes and references there is no question in our minds but that the Minersville Reservoir and Irrigation Company is entitled to the 7500 acre feet ahead of and against any rights of the Rocky Ford Irrigation Company.

Yours very truly,

Hubert C. Lambert
DEPUTY STATE ENGINEER

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