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November 3, 1964



Mr. Wayne Criddle, State Engineer  
State Engineer's Office  
State Capitol  
Salt Lake City, Utah

Dear Mr. Criddle:

Recently a question has been raised in connection with the proper distribution of the waters of Beaver River as between Minersville and the Rocky Ford Irrigation Company. We have reviewed the files and find that Minersville had certain water rights in the Beaver River which it had acquired many years ago, and which were recognized both by contract and the subsequent Beaver River decree.

The recorded contract relating to these water rights is found in the office of the County Recorder of Beaver County. The contract is dated April 30, 1913, between Minersville Reservoir and Irrigation Company and Beaver County Irrigation Company. The successor to the Beaver County Irrigation Company is the Rocky Ford Irrigation Company. This agreement was subsequently modified by an amendment thereto dated March 19, 1919. Both of these documents have been previously filed in the office of the State Engineer.

In litigation occurring in 1918 the District Court of the Fifth Judicial District was called upon to interpret the then existing contract and determined the rights in the water of Beaver River as between the people holding water rights in the bottomlands of Beaver County and the Minersville Irrigation Company and the Beaver Irrigation Company. As a result of this litigation, it was ruled by the court that the Beaver County Irrigation Company was the owner of a first and primary water right entitling it to the use as it might see fit during the summer season of each year to all waters of the Beaver River flowing to or into the Rocky Ford Reservoir, up to and including a flow in said river of 40 c.f.s. and no more, and the decree also granted a secondary right subject to the rights of the plaintiffs who were the Beaver Bottoms owners, to any additional waters over and above the amount owned by the Beaver Bottoms. Actually, shortly thereafter the Beaver County Irrigation Company acquired the rights of all of the plaintiffs in this action and therefore the Beaver County Irrigation Company became the owner of both the first and secondary rights as adjudicated in this case.

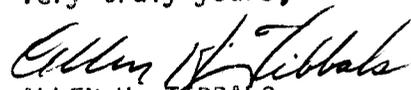
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Minersville, however, remained the owner of a primary right during the summer season of each and every year of up to 40 c.f.s. of flow in the Beaver River. The summer season as defined by the court and as defined by the water rights was from April 1 to October 31 of each year. The contract rights referred to provided that the flow rights referred to in the decree could be stored up to 7500 acre feet, and the Beaver River decree at Entry No. 97 recognized the two contracts and specifically provided for the storage of 7500 acre feet of water from April 1 to October 31 of each year under and pursuant to the terms of the contract. The decree further recognized a flow right for stock watering of 2.0 c.f.s. from November 1 to March 31 of each year. Minersville has been receiving its winter flow rights which must be satisfied pursuant to the decree, from the water arising between the Rocky Ford Dam and the diversion point of Minersville Irrigation Company, and when there is not sufficient water arising in this stretch, Rocky Fork Irrigation Company, the successor to the Beaver County Irrigation Company, is required to release a sufficient flow to make up the 2.0 c.f.s. during the winter.

After this long recital, the specific problem which has been presented for consideration and upon which your view is sought is as to whether or not the Minersville people have any right to the winter storage water stored in the Rocky Ford Irrigation Company Dam. It is our view that they do not have, because it is specifically provided that their rights are limited to waters arising between April 1 and October 31 each year, and the agreements both provide that there will be no carryover. The problem is of importance because the last two or three years there has not been a sufficient flow in the Beaver River between April 1 and October 31 of each year to make up 7500 acre feet. The Rocky Ford Irrigation Company has called this matter to our attention and asked a specific opinion as to whether or not under such circumstances they are under any requirement to relinquish winter storage water to make up this 7500 acre feet. As we have indicated, we believe by interpretation of the documents referred to that they cannot be required so to do. But in order that there might be no conflict or difference of opinion, we would appreciate your consideration of these documents and the water rights involved and an expression of your opinion, so that we may advise the Board of the Rocky Ford Irrigation Company and of the Minersville Irrigation Company and thereby perhaps prevent any dissention.

Thanking you for your attention to this matter, we remain

Very truly yours,

  
ALLEN H. TIBBALS

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