



February 8, 2007

State of Utah
Department of Natural Resources
Division of Water Rights
P.O. Box 718
Price, UT 84501
ATTN: Jerry D. Olds, State Engineer

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SALT LAKE

Re: Water Administration and Management Policy for Argyle Creek (90 Area) in Carbon and Duchesne Counties

Dear Mr. Olds:

We are the fee owners of the Fasselin Ranch property in the Argyle and Nine Mile Canyon drainage system (see Exhibit A), along with the appurtenant water rights associated with the property in the Argyle and Nine Mile Canyon watershed (see Attachment B).

We have reviewed the information presented at the public meeting held on December 6, 2006 at the Carbon County Courthouse Commissioner's Room to discuss the new Argyle Canyon Policy for Water Appropriations, have reviewed the December 6, 2006 draft of the Policy, and offer the following comments.

The long-standing doctrine of prior appropriation of water rights, the fully appropriated nature of the water rights in the Argyle Creek watershed, along with the lack of any documented scientific data to suggest that previously un-appropriated water is available for new appropriation, dictates that no new water rights be approved.

At the public meeting, and in the Policy document, the investigation conducted by the Department of Water Rights ("Water Rights") staff has been described. Certain assumptions have been made by Water Rights regarding the hydrology of the basin based upon cursory observations. These observations consisted of "blinks", noting the flow conditions in Argyle creek on several occasions. Based upon 5 visits to the site in one year (May, June, August, September and October of 2004), along with a literature review of published studies of indoor domestic water use, Water Rights concludes; "Therefore, additional allocations of water for only in-house domestic purposes will not adversely affect the flow of the creek and senior downstream water rights." Such a brief period of surface flow investigation, linked with the lack of any pertinent scientific data regarding ground water – surface water relationships is wholly inadequate to assess the long term impacts of additional water use in the basin.

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The assumptions used in reaching the Policy's conclusions, linked with the lack of available scientific data on the watershed, unrightfully places the burden of proof for damages upon the senior downgradient water rights holders, giving carte blanche approval to new water users.

Understandably, Water Rights does not have appropriate funding to fully understand the intricacies of the hydrologic system within the basin, but that is even more reason to exercise extreme caution in protecting long-standing, legal rights to water held by downstream prior appropriators.

The assumption that water will be used by the domestic applicants only during the summer months is very short-sighted, and requires that future use patterns will be consistent in perpetuity with the current observed use. This simply is a bold leap. This assumption also dictates that if occupancy seasons change in the future, there WILL be an implied negative and material impact on downstream prior appropriators.

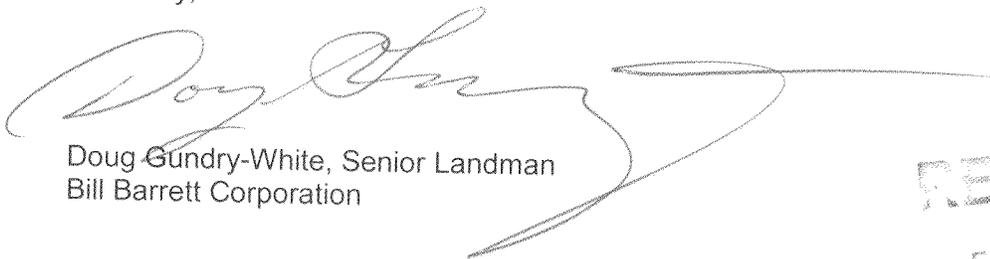
Nowhere in the information presented has Water Rights addressed the impact of residential development in the upper portions of the watershed, which is very well documented generally to increase "flash" runoff in heavy precipitation events and greatly reduce up-gradient aquifer recharge efficiencies. The flash runoff is not usable by immediate downstream water rights holders and the decreased recharge negatively impacts the entire basin in the long-term.

It appears that all of the criteria used to formulate the policy decision were based on assumptions which are not supported by data, and which paint a very complex system with a very broad brush stroke.

Finally, Water Rights has not addressed the potential cumulative impacts of this policy on downstream senior water users. If all 291 platted lots are awarded a right of 0.25 AFY, the impact will be 73 AFY (24 million gallons per year), hardly inconsequential in an already fully appropriated basin.

Based upon the information provided by Water Rights, we feel that the adoption of the Water Administration and Management Policy For Argyle Creek (90 Area) In Carbon and Duchesne Counties in it's present form is unwise, and will unmistakably and materially damage downstream senior water users. We are opposed to the implementation of this Policy and recommend that Water Rights place a moratorium upon current pending water rights applications and all future applications until such time as a definitive and complete scientific evaluation has been conducted of the basin.

Sincerely,



Doug Gundry-White, Senior Landman
Bill Barrett Corporation

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EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1: (DUCHESNE COUNTY)

TOWNSHIP 11 SOUTH, RANGE 15 EAST, SALT LAKE BASE AND MERIDIAN:

SECTION 22: SENE, NESE
SECTION 23: SESW
SECTION 24: SWSW
SECTION 25: W2NW, SWSE
SECTION 35: NENE

TOWNSHIP 11 SOUTH, RANGE 14 EAST, SALT LAKE BASE AND MERIDIAN:

SECTION 35: SENE, SWNE, S2NW, NWSW
SECTION 36: S2NW, N2SW, EXCEPTING that portion conveyed to Mountain Fuel Supply Company by Warranty Deed recorded in Book A-10, at page 273, records of Duchesne County.

PARCEL 2: (CARBON COUNTY)

TOWNSHIP 12 SOUTH, RANGE 14 EAST, SALT LAKE BASE AND MERIDIAN:

SECTION 7: NESW, NWSE, SENW, SWNE
SECTION 13: NESW
SECTION 15: SESW, SWSW
SECTION 20: SWNE, S2SE, NENW, NWNE
SECTION 21: SWSW
SECTION 22: NWNW
SECTION 24: SENE
SECTION 26: N2S2, SWNW
SECTION 27: N2SW, SWSW, S2NE
SECTION 28: S2SE, NWSE, SESW, SWSW, NWNE
SECTION 29: N2, SE, E2SW
SECTION 31: NESE
SECTION 32: N2, E2NESE
SECTION 33: N2NW

TOWNSHIP 12 SOUTH, RANGE 13 EAST, SALT LAKE BASE AND MERIDIAN:

SECTION 12: SWSW, E2SE
SECTION 13: NWNW
SECTION 14: N2NE

TOWNSHIP 12 SOUTH, RANGE 15 EAST, SALT LAKE BASE AND MERIDIAN:

SECTION 19: Lot 2

PARCEL 3: (DUCHESNE COUNTY)

TOWNSHIP 11 SOUTH, RANGE 13 EAST, SALT LAKE BASE AND MERIDIAN:

SECTION 26: N2S2
SECTION 28: SWSW
SECTION 33: W2NW, SENW, NWSE, E2SE, S2NE

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SECTION 34: W2NW, SWSW

PARCEL 4: (CARBON COUNTY)

TOWNSHIP 12 SOUTH, RANGE 12 EAST, SALT LAKE BASE AND MERIDIAN
SECTION 1: LOTS 6 & 7

TOWNSHIP 12 SOUTH, RANGE 13 EAST, SALT LAKE BASE AND MERIDIAN
SECTION 5: LOT 4, SWNW, NWSW
SECTION 6: LOTS 1, 6, & 7, SE, E2SW
SECTION 7: N2NE
SECTION 8: N2N2

PARCEL 5 (CARBON COUNTY)

TOWNSHIP 12 NORTH, RANGE 13 EAST, SALT LAKE BASE AND MERIDIAN
SECTION 6: SENE

PARCEL 6: (DUCHESNE COUNTY)

TOWNSHIP 11 SOUTH, RANGE 13 EAST, SALT LAKE BASE AND MERIDIAN
SECTION 31: S2SE, SENE, NESE

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EXHIBIT "B"

LEGAL DESCRIPTION

<u>Claim #</u>	<u>Source</u>	<u>Priority</u>	<u>Flow CFS</u>	<u>Use</u>	<u>Area of Use</u>
20	Nine Mile Creek	1919	1.1	Irr.	14 ac. SENE 6.6 ac. SWNE 16.5 ac. SENW 4.6 ac. SWNW 20.9 ac. NWSW Sec. 35-T11S-R14E .9 of an ac. SENW 17.6 ac. SWNW 11.3 ac. NESE 4.9 ac. NWSW Sec. 36-T11S-R14E
272	Nine Mile Creek	1894	0.13	Irr.	Same as above
273	Nine Mile Creek	1886	0.1	Irr.	Same as above
274	Nine Mile Creek	1895	0.02	Irr.	Same as above
275	Nine Mile Creek	1887	0.05	Irr.	Same as above
276	Nine Mile Creek	1888	0.01	Irr.	Same as above
277	Nine Mile Creek	1889	0.08	Irr.	Same as above
278	Nine Mile Creek	1891	0.12	Irr.	Same as above
279	Nine Mile Creek	1960	0.5	Irr.	Same as above, 97.3 ac. These claims limited to 323.2 ac. ft. annually
5 (24, 196)	Nine Mile Creek	1956	5.0	Irr.	1.8 ac. NENE 4.8 ac. NWNE Sec. 14-T12S-R13E
4 (5, 19, 24, 196)	Nine Mile Creek	1926	0.3	Irr.	15.9 ac. NESE 2.4 ac. SWSW Sec. 12-T12S-R13E 6.6 ac. NWNW Sec. 13-T12S-R13E 0.8 ac. NENE Sec. 14-T12S-R13E 9.45 ac. NESW Sec. 7-T12S-R14E Limited to 17.8 ac. alone
19	Nine Mile Creek	1926	0.5	Irr.	Same as Claim 4 Limited to 11.5 ac. alone
24	Nine Mile Creek	1886	3.0	Irr.	1.8 ac. NENE 4.8 ac. NWNE Sec. 14-T12S-R13E Plus land described for Claim 4
196	Nine Mile Creek	1888	7.0	Irr.	Same as Claim 24 Total diversion under Claims 4, 5, 19, 24, and 196 is limited to 178 ac. ft. annually
14	Dry Canyon Creek	1956	2.89	Irr. Livstk.	2.1 ac. NESW 5.9 ac. SESW 0.1 ac. SWSW Limited to irr. For 3.16 ac.

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27	Stone Cabin Creek	1885		Livstk.	SWSW, Lot 3 Sec. 4-T13S-R14E
264	Spring	1885		Livstk.	NENE Sec. 32-T12S-R14E
288	Nine Mile Creek	1885		Livstk.	Running through NWSW Sec. 35 to NESW Sec. 36-T11S-R14E
367	Spring	1885	2.0	Livstk.	NENW Sec. 8-T13S-R14E
383	Nine Mile Creek	1885		Livstk.	NWNE Sec. 14-T12S-R13E
384	Nine Mile Creek	1885		Livstk.	NENE Sec. 14 to SWSW Sec. 12-T12S-R13E
385	Nine Mile Creek	1885		Livstk.	NESE Sec. 12-T12S-R13E
415	Stone Cabin Creek	1885		Livstk.	Lots 1 & 2 Sec. 4-T13S-R14E
416	Stone Cabin Creek	1885		Livstk.	Lots 3 & 4 Sec. 3-T13S-R14E
419	Stone Cabin Creek	1885		Livstk.	NESE Sec. 7 to NENE Sec. 8 T13S-R14E
420	Spring	1885		Livstk.	SWNW Sec. 19-T12S-R15E
1485	Blind Canyon Creek	1885		Livstk.	SESW Sec. 25-T11S-R15E
1531	2 Wells	1973		Domes.	Sec. 35-T11S-R14E
10	Argyle Creek	1980	5.0	Irr.	10.1 ac. NWSW 12.1 ac. NESW 14.3 ac. NWSE 8.8 ac. NESE Sec. 26-T11S-R13E

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