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September 22, 2008

Richard Cortese  
Edgemont Ranch Metropolitan District  
5972 CR 234  
Durango, CO 81301

*Re: Abling Cash*

Dear Richard:

You requested that I provide you with the priorities of the Abling & Cash ditch water ("A-C") that Tom Gorton owns, and give you an estimate of the water that Edgemont would be able to divert and consumptively use after a change case for the Abling-Cash.

Gorton Family Partnership, LLLP owns 0.4048 cfs of priority F-4 water and 0.2510 cfs of priority F-15 water in the A-C. See attached deed. These are excellent priorities on the Florida River, particularly the F-4. According to the water commissioner, F-10 or better has never been called out, and F-15 was only called out for a period of time in 2002, a very dry year.

In a change case, the basic idea is we would quantify the historic diversions and historic consumptive use of the A-C, take Tom's share of it (which is a little over 60%), dry up acreage under the A-C associate with Tom's share, and move Tom's share of diversions and consumptive use downstream for diversion at Edgemont.

There have been some previous change cases of A-C water that we can look to as potential examples of how a change of Tom's A-C water might be adjudicated. In Case No. 85CW39, the Court found that 36 acres had historically been irrigated under the A-C at a rate of 1.49 acre-feet ("af")/acre, resulting in historic consumptive use ("HCU") of 53.64 af. Tom's share of that amount would be 32.55 af. In Case No. 04CW70, the Court found that 40 acres had been historically irrigated at a rate of 1.49 af/acre, resulting in HCU of 59.40 af. Tom's share of that amount would be 36 af. The consumptive use is the amount of water that was used up by the crops historically and did not return to the stream. When the consumptive use amount is changed to new uses, it is that amount that can be used up in the new uses and does not need to be returned to the stream.

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To be able to change 36 af, we would need to be able to dry up 24 acres under the A-C based on the assumption in the previous cases of 1.49 af/acre. To change 32.55 af, we would need to dry up 21.8 acres. Previously, we reviewed the historic acreage under the A-C, and evaluated the historic lands that currently have A-C ownership and those that don't. If we only dried up historic lands that currently don't have A-C ownership, this results in available dry up lands of approximately 25 acres if 40 acres were irrigated historically, and approximately 18 acres if 36 acres were irrigated historically. If we could only dry up 18 acres under the A-C, we could change about 26.8 af of water.

Besides the acreage available for dry up, there are other factors that could impact the amount allowed for change. For example, in the 2004 case, I proposed the historic use assumptions for the A-C (as an objector for Tom) based on the assumptions in the previous cases, to help establish a precedent for future cases. The proposed historic consumptive use was accepted by DWR and the Court without much scrutiny, as there were no other objectors in the case, such as the City of Durango and the Southern Ute Indian Tribe. When we file an A-C change case for Tom's share, the City and Tribe will likely object (since we would be changing a larger amount than the previous cases), and if so, will likely require that we perform a current HCU analysis, which would involve reviewing irrigated acreage, diversions and consumptive use through the current date, and could result in a lower amount of HCU than was determined in previous cases. To give us a better idea of the amount that could be changed based on a current HCU analysis, we would need to hire a water engineer to perform this analysis.

If the assumptions in the previous change cases are adopted in a change of Tom's water, we can reasonably estimate that between 27 and 36 af of water could be changed. If a current HCU analysis is required, this amount could be reduced.

In the previous A-C change cases, the Applicants were allowed to change the full amount, or close to the full amount of the flow rate they owned, with annual diversion volume limitations based on the amount of historic diversion. If a current HCU analysis is required, the diversion flow rate could be reduced based on lesser historic flows than the decreed amounts. Additionally, objectors could require some water to be left in the stream for carriage losses between the historic and new points of diversion and as a negotiation matter to help prevent injury to other water users. For example, in the Edgemont change case, about 24% of the owned flow rate in the McCluer Murray and Harris Patterson water rights was required to be left in the stream. This does not necessarily present a problem because the change will be limited by historic consumptive use and diversions anyway, thereby limiting the total annual volume that could be diverted and consumptively used.

As you can see, estimating the amount of water that can be changed is not an exact science and depends on various factors. Let me know if you would like me to obtain some additional water engineering assistance to estimate the amount that could be changed if we are required to perform a current HCU analysis.

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Please contact me with questions or comments, or if there are other issues you would like me to address.

Sincerely,

THE CRAIG LAW FIRM P.C.

By: /s/ Geoffrey M. Craig  
Geoffrey M. Craig

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