



THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY .

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STATE ENGINEER

June 27, 1940

REL: BURNT FORK DISTRIBUTION

Memorandum for office study only, by AUSTIN G. BURTON

On Sunday, June 23, I left Salt Lake at 7 A. M. and drove to Lone Tree, Wyoming, where I attempted to contact Mr. Owen Bullock who, some years ago, acted as commissioner of the Henry's Fork and its tributaries. I found that Mr. Bullock had been injured by a horse and had been moved to Salt Lake for medical attention.

I proceeded on to the Burnt Fork school house where I attended the water users' meeting at 2 P. M. There were, in attendance, approximately 35 men almost all from the Burnt Fork Section. A list of the Utah diverters is attached hereto, together with the minutes of the water users' meeting. There was little or no representation from Beaver Creek and the Upper Henry's Fork. When the purpose of the meeting had been explained, that of organizing the Utah users with a committee to represent them in petitioning for a water commissioner, it became evident from the discussion that the Utah diverters from Burnt Fork, as a majority, were opposed to the employment of a water commissioner. Only one faction, or appropriator was in favor of the commissioner, the Hoop Lake Reservoir Company.

The Utah users on Burnt Fork reported that the stream had receded to a point where all of the direct flow belonged to them; that the Interstate Irrigation Company was releasing water from Beaver Meadows and that an understanding had been reached between this company and the three or four ditches that irrigate land in Utah, so that no need was evident in that section for a commissioner. A small group from Linwood, Utah, favored the appointment of the commissioner; however, these people have their diversion in Wyoming, and therefore, they must depend on service from Wyoming distribution.

Before the meeting was concluded, however, two committees were named in order that if necessity arose, these committees might act for the people in either the appointment of commissioner or settling disputes that might arise in the distribution of water. One committee is composed of men living in Utah--one from the Beaver Creek section, another from the Burnt Fork section, and the third from the lower Henry's Fork in the Linwood section. The Wyoming committee is composed entirely of Wyoming users and was appointed by the Wyoming men present.

At the conclusion of this meeting (5 P. M.) I went with Mr. William McGinnis of McKinnon, Wyoming, and made a field examination of conditions on Burnt Fork in Section 16, T. 3 N. R. 17 E., what is commonly known as the school section, belonging to Mr. D. C. Jensen. I found that Mr. Jensen is diverting all of the waters of Burnt Fork entering or raising upon this section in 4 points of diversion; that the water is being spread over the creek-bottom lands where no crops have been planted. I found that Boldie Springs, that for years was diverted in the Boldie Spring ditch had been entirely cut back into

On Monday morning, after completing the examination in the upper Burnt Fork area, and while attempting to contact Mr. McGinnis regarding release of Hoop Lake Reservoir, I met Mr. Lloyd, Assistant State Engineer of Wyoming. Mr. Lloyd stated to me that he had just come from Mr. D. C. Jensen's, and that Mr. Jensen had made a proposition by which he thought it would be possible to make the Hoop Lake Reservoir release, and distribution without further trouble from Mr. Jensen. He requested, however, that I go with him in a field examination and assist in making the arrangements for this delivery. He located Mr. McGinnis, who is the President of the Hoop Lake Reservoir Company, and incidentally, the Wyoming Water Commissioner for the Henry's Fork and tributaries in Wyoming, who was asked to accompany us on this trip. We measured each of the diversions beginning at the lower part of the Jensen ranch and including the diversions up in Utah in the school section, section 16. It was found that there would not be enough water to completely fill all of the rights, but that much good could be accomplished if the available water could be prorated to the earliest users. Mr. Jensen proffered to refrain from interfering with the Bolde spring and other water, if given the water that would belong to him under his rights in the Widdup and Home ditches, 2.17 sec. ft., this to be furnished through the Jensen Highline and Widdup ditches. There would still remain of the supply that we found, enough to supply the Stohl right in the Bolde ditch and to increase the supply that would be available for early users in Wyoming. In completing the ditch to bring the Hoop Lake Water by way of Indian Creek to the east branch of Burnt Fork, the Hoop Lake Reservoir Company placed a large solid dam in the west branch of the creek that diverts the water from Indian Springs and any other water that may come down that branch over to the east branch, and would, therefore, not make water available for the Jensen diversions from the west

The Interstate Irrigation Company was successful in completing the Beaver Meadows reservoir during the latter part of 1939 and during the winter and spring they completely filled it. This water is being released and furnishes the only supply for the Interstate canal.

Irrigation and Reservoir Company canal. Under the Russell, Gamble and Welch ditches, and also under the Interstate is being placed under cultivation both north and south of the Utah state line, when distribution was made some years ago. I did find, however, that new land capacities of the ditches and do not exceed the amounts allotted to these ditches. These amounts are much less than the approximately 8 sec. ft. of water, the Gamble and Welch ditches were diverting approximately 5 and 4 sec. ft. respectively. I found that the Russell ditch was diverting more water than their Applications permitted, and that there was a pronounced evidence of waste of water. I went up into Utah, as it had been reported to me that Messrs. Russell, Gamble, Welch and others were diverting more water than their Applications permitted, and that there was a pronounced evidence of waste of water.

After making this examination, I went up into Utah, as it had been reported to me that Messrs. Russell, Gamble, Welch and others were diverting more water than their Applications permitted, and that there was a pronounced evidence of waste of water. I found that the Russell ditch was diverting approximately 8 sec. ft. of water, the Gamble and Welch ditches were diverting approximately 5 and 4 sec. ft. respectively. I found that the Russell ditch was diverting more water than their Applications permitted, and that there was a pronounced evidence of waste of water.

Burnt Fork, and was being used by Mr. Jensen. It was reported to me that this condition had existed all during the irrigation season; that Mr. Jensen had not permitted Mr. Stohl and others to have any water through the Bolde Spring ditch.

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branch. Mr. Jensen insisted that this dam be removed in order that both the Indian Springs waters and any high waters may flow in their natural courses on down to his points of diversion. Mr. Jensen stated that he would not agree to the understanding, unless this dam were removed and some other means provided for delivery of the Hoop Lake water to the east branch of the creek, a means that would not necessitate a dam that would prevent his appropriation from that stream. The Hoop Lake Reservoir Company expressed no willingness to remove the dam and asked that the distribution be made with the arrangements as they now exist; that Mr. Jensen make his diversion from the east branch over through his field to the Jensen Highline ditch or the Widdup ditch as necessity would require.

I made inquiry of Mr. Jensen as to his right for appropriation of water in Section 16. He stated that a number of years ago he filed Application No. 8710; that he began diversion of water under this Application, but that his life was threatened by other users, and that they even went so far as to put him in the water and nearly drowned him, and that he became frightened and permitted this application to lapse; that he had received advice from his attorney that he could lawfully make the diversions under the circumstances. He gave as a second reason for doing so, that he had requested that the water belonging to him under early rights should be delivered to him through the Jensen Highline canal, and that he had attempted to make these diversions himself, but that the Wyoming water commissioner had cut his ditch where it crossed the State line, thus turning the water back into Burnt Fork creek.

I left the Hoop Lake people, Mr. Jensen and Mr. Lloyd undecided as to what would be the outcome. I did, however, state to the Hoop Lake people that in my opinion they had no right to obstruct the natural flow of water down the west branch of the creek, and that this obstruction should be removed. They stated that they would prefer not being required to go to this work at this time, because they had been placed at a very great expense in completing the canal, and that they could not be sure that Mr. Jensen would continue with any agreement that he would make. I informed Mr. McGinnis that if it became necessary to have Commissioner service in order to get the Hoop Lake water down Burnt Fork to its points of redirection, that such commissioner (a resident of Utah) would be appointed upon request of his company, and with the understanding that the State Engineer will in no way be responsible for the costs which of necessity must be paid by the company.

Recently a party of water users went up the Burnt Fork on to Mr. Jensen's land there to remove obstructions in the channel and to repair breaks in their ditches. The obstructions removed were the dams that Mr. Jensen had placed to divert water at his ditches that now are without Application. Mr. Jensen had a warrant of arrest issued for eight of the men for trespass and has been trying to have this warrant served. Apparently these men were within their rights, at least when they were repairing their ditches.

Attached hereto is a sketch showing the features in the Jensen-Hoop Lake controversy.

REL: HENRY'S FORK AND BURNT FORK DISTRIBUTION

8/26/40

8/26/40 - By Austin G. Burton

On August 22, I went to Northeast Summit county and to Daggett county to investigate the complaint of water shortage at Linwood, and the D. C. Jensen trouble on Burnt Fork. At Burnt Fork I contacted Mr. McGinnis who reported the condition at Linwood and was informed that he had contacted the users on the heads of Beaver and Henry's Fork creeks, and all had been willing to release the water for such time as is necessary to run the water down Henry's Fork past Linwood and fill up the holes in the channel of this creek. I went down to Linwood, and found that there has been no flow in the creek for more than two months, that most of the ponds and water holes along the channel have dried up, and that the water in the few remaining holes is deeply colored indicating high mineral content.

I contacted Keith Smith of Linwood and was informed that he had 8 valuable bucks die with no known cause other than the quality of the water. I was referred to a number of stockmen who have reported losses attributed to the water. During the morning of the 23rd, I contacted the Burnt Fork Water Users in Utah and found all willing to let the water go to Henry's Fork long enough to run past Linwood. The Burnt Fork water was carried through the Interstate Canal to Birch creek, thence to Henry's Fork (1), because it would have a wet channel nearby all the way, and (2), so as not to carry it past D. C. Jensen.

Mr. Emil C. Grader, Supt. of Water Diversion No. 4 Wyoming, was with me during my contact of the Water Users on Burnt Fork, and expressed himself as highly pleased with the co-operation we received. During the afternoon, Mr. Grader and I went over the conditions on Burnt Fork from Indian Springs and the Hoop Lake canal down through the D. C. Jensen School section to the State line. We found that a small stream of water is still coming from Hoop Lake - possibly 1 1/2 sec. ft. - however, Mr. McGinnis had stated that the reservoir was practically empty. No means has been provided for measuring the flow that is delivered to Burnt Fork from Hoop Lake, and this was called to the attention of Mr. McGinnis.

The dam that had been placed in the west branch of Burnt Fork has been cut, in partial compliance with the letters from this office of June 29 and July 11, 1940. An attempt has been made to collect the water that flows from Indian Springs into the west branch and convey it by a small ditch to a secondary branch through which it would be passed under the Hoop Lake canal in a corrugated culvert. See sketch attached. One, Ray Stoll, with the aid of some beaver, is increasing the ponds at Indian Springs so that the overflow is continually changing, making it difficult - if not impossible to control the course of this water. Mr. Jensen is still diverting practically all of the flow of Boldie Springs, Indian Springs and the Hoop Lake water on his school section in Utah. Possibly one-half as much water as was being delivered by the Hoop Lake canal was reaching the Midway ditch to go to Hoop Lake users.

Mr. Jensen was contacted, and inquiry made as to why he was still diverting the water onto his Utah lands and was receiving none through the Highline ditch as was planned when I went over the matter with Mr. Lloyd. He said that he had received legal advice that the Hoop Lake Reservoir Company had no right to convey water from Hoop Lake over to and down the channels of Burnt Fork through his

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lands without first obtaining a right-of-way from him to so convey the water. He had been trying to prevent the conveyance of the water until this right-of-way was obtained.

Mr. McGinnis stated that an attempt had been made to distribute the water and give Mr. Jensen water as agreed through his Highline ditch, but that Jensen had continued to divert all the water that he could onto his Utah lands and had prevented any water reaching him through the Highline ditch. There has been gun trouble and threat of shooting. Jensen says that he was shot at but Mr. McGinnis says shots were fired to frighten Jensen's boy who was trying to wreck his car..

The Hoop Lake Reservoir Company, Interstate Irrigation Company, and some private appropriators of Utah, indicated to me that they want a Water Commissioner next season, that they they will do what is necessary to have one appointed.

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