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April 13, 1981

M E M O R A N D U M

TO: Dee C. Hansen, State Engineer
Harold D. Donaldson, Directing Adjudication Engineer
Donald C. Norseth, Directing Distribution Engineer

FROM: Dallin W. Jensen, Assistant Attorney General

RE: Duchesne River Distribution

We just received the attached Petition for Determination of Disputes, Affidavit of Ray Thomas, and Statement of Points and Authorities from E.J. Skeen.

Would each of you please look over these documents and then we should get together and decide what our response to them will be.

Thanks.

F. J. SKEEN
SKEEN AND SKEEN
Attorneys for Petitioners
536 East 400 South
Salt Lake City, Utah 84102
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR DUCHESNE COUNTY, STATE OF UTAH

IN THE MATTER OF THE GENERAL)
DETERMINATION OF THE RIGHTS) PETITION FOR
TO THE USE OF ALL THE WATER,) DETERMINATION
BOTH SURFACE AND UNDERGROUND,) OF DISPUTES
WITHIN THE DRAINAGE AREA OF)
THE UINTAH BASIN.) Civil No. 3070

THE PETITION of Tabby Irrigation Co., Broadhead Ditch Co., Farm Creek Irrigation Co., a Utah corp., Rhoades Canal Co., a Utah corp., Hicken Ditch Co., Wagstaff Ditch Co., Little Farm Creek Irrigation Co., Big Spring Irrigation Co., Turnbow Ditch Co., Brown Ditch Co., Shanks Ditch Co., Van Tassell Ditch Co., and Wright Ditch Co., respectfully shows to the court:

1. The petitioners above-named are the owners of water rights on the Duchesne River and are parties to this proceeding. *yes*

2. This petition is filed pursuant to Section 73-4-24, UCA, and involves water rights of less than all of the parties to this suit.

3. The attached affidavit describes in some detail the disputes between the petitioners and the United States, as Trustee for the Indians, and the Ute Indian Tribe regarding certain decreed and certificated water rights and the distribution of water under such water rights and is, by reference, made a part of this petition.

4. The United States has entered its appearance in this proceeding by filing water users claim No. 1239 covering the appropriation of water for conveyance through the Duchesne Feeder Canal for storage in Midview Reservoir and has filed other water users claims, but has filed no claims as trustees for the Indians setting out water rights evidenced by certificates of appropriation issued by the State Engineer and by pending applications, if any, and water rights generally

referred to as reserved water rights for the use and benefit of the Indians.

5. Petitioners are informed and believe that the Ute Indian Tribe asserts and claims rights to the use of water involved in this statutory suit for the general determination of the water, both surface and underground, within the drainage area of the Uintah Basin and that the officers and representative of said Indian Tribe have filed no claim to water rights as required by law.

6. That Section 73-4-5, UCA, 1953, requires each claimant to water in the above-described source to file statements of claims and Section 73-4-9 provides that the failure to file claims shall result in a forfeiture of water rights.

7. That for several years last past the Duchesne River water commissioner has distributed the water of such river on a temporary basis under orders of the above-entitled court to the United States, as Trustee for the Indians, and to other water users without prejudice to the rights of parties to this suit and your petitioners believe that the past practice will be followed in the irrigation season of 1981. It appears that the water supply for the Uintah Basin will be deficient in 1981 and that if the practice of distributing water on a temporary basis is again followed, there will not be sufficient water to satisfy the water rights of your petitioners.

8. In the year 1918, the United States Bureau of Reclamation filed Application No. 7781-a to obtain a right to divert water from the Duchesne River to effect what is generally known as the Midview Exchange. The water, so diverted, is stored in the Midview Reservoir and is released to satisfy Federal Court decreed rights of the United States on Lake Fork, a tributary of the Duchesne River, so that Lake Fork water can be diverted upstream for storage in Moon Lake. The decreed water rights are expressly limited by the decree to the use of three-acre-feet of water per acre.

9. Petitioners further represent that many certificates of appropriation heretofore issued by the State Engineer of Utah to the United States, acting through the Bureau of Indian Affairs, impose a restriction on the water rights evidenced thereby of three acre-feet per acre.

10. Petitioners are informed and believe that in the past the Duchesne River water commissioner has ignored the restriction of three-acre-feet per acre set out in court decrees and in state engineer's certificates and will ignore such restrictions in 1981 unless otherwise ordered by the court.

11. Affiant further states that for several years prior to 1965 the United States, acting through the Bureau of Indian Affairs, the Ute Tribe of Indians and the Central Utah Water Conservancy District engaged in negotiations (from which representatives of the petitioners and other private water right owners were excluded), which resulted in an agreement dated September 20, 1965. Such agreement provides that certain Indian water rights are recognized and confirmed in quantities greatly in excess of actual use of water by the Indians, their successors and assigns, and are in excess of water rights covered by water right applications and certificates on file in the State Engineer's office.

12. The moving parties, and other similarly situated, were not parties to the 1965 agreement, have not ratified it, and it is believed are not bound by it; but nevertheless the affiant is informed and believes that the United States and the Ute Indian Tribe claim that the water rights of such petitioners and others similarly situated are subject to such agreement.

13. Affiant further states that if the terms of the 1965 agreement are imposed on the petitioners, there will be insufficient water in the Duchesne River to produce crops on lands irrigated under water rights of the petitioners and others similarly situated with the results that the stability of the agricultural and livestock economy in the Duchesne River Drainage area will be destroyed.

WHEREFORE petitioners pray that this petition be set for hearing on a date certain and that after hearing the court make and enter an order declaring:

(1) That the United States of America is a party to this suit and is subject to the provisions of Chapter 4 of Title 73, UCA, 1953.

(2) That the Ute Indian Tribe is a party to this suit and is subject to the provisions of Chapter 4, Title 73, UCA, 1953.

(3) That unless statements of water users claims are filed by the United States and by the Ute Indian Tribe covering all appropriative and reserved rights within a reasonable time to be fixed by the court, such rights shall be deemed forfeited.

(4) That the decreed rights of the United States involved in the Midview Exchange are limited to three-acre-feet per acre.

(5) That the certificated water rights of the United States, acting by and through the Bureau of Indian Affairs, are limited to three-acre-feet per acre.

(6) That during the 1981 irrigation season distribution of water to the United States and to the Ute Indian Tribe under the said federal decree and certificates shall be limited to three-acre-feet per acre.

(7) That the agreement dated September 20, 1965, among the United States, the Ute Tribe of Indians, and the Central Utah Water Conservancy District is not binding upon the petitioners.

SKEEN AND SKEEN

By:

ES
E. J. SKEEN

Attorneys for Petitioners

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing
PETITION FOR DETERMINATION OF DISPUTES together with the
attached AFFIDAVIT and its attachment, and the STATEMENT
OF POINTS AND AUTHORITIES was mailed to the following
counsel of record and parties in interest, postage prepaid,
addressed as follows, on the 9th day of April, 1981.

Dallin Jensen
Assistant Attorney General
301 Empire Building
231 East 400 South
Salt Lake City, Utah 84111

Uintah Ute Indian's Inc.
George R. Douglas, Jr., Process Agent
1126 16th Street, N.W., #34
Washington, D. C. 20036

United States Attorney
350 South Main
Salt Lake City, Utah 84101

Luigi A. Chadwick