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THE STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL
Salt Lake City

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REQUESTED BY: Wayne D. Criddle, State Engineer

OPINION BY: Walter L. Budge, Attorney General;
Richard R. Boyle, Assistant Attorney General

QUESTION: Under the provision of the gubernatorial withdrawal of the Duchesne River from appropriation which allowed applications for 5 c.f.s. for "any one project", should the below noted applications be considered as within such provision?

CONCLUSION: See opinion.

The first class of applications made by individuals are those for 5 c.f.s. all diverted into same canal and storage reservoir, and all for irrigation of a single tract, many of which state: "This application will be assigned to the Whiterecks Irrigation Company and if not assigned, will be null and void."

The second group of applications for 5 c.f.s. are by individuals seeking to divert water at a common point, carry it through a common canal and irrigate individual tracts of land, all within the area served by an existing canal company.

It should be noted preliminarily that the entire Duchesne River and its tributaries was withdrawn from public appropriation by the Governor on December 19, 1945 under provision of Section 100-8-1, U.C.A. 1943 (now 73-6-1, U.C.A. 1953) for the preservation of existing vested uses and the general welfare of the State.

The exception made which is now under consideration allowed for applications for appropriation of up to 5 c.f.s. for any one project. The fact that such applications are an exception to a complete withdrawal must be borne in mind to properly interpret the language therein.

The use of water on the Duchesne is virtually all agricultural; hence, the proclamation of withdrawal must be interpreted in this light.

The term "project" is defined in the agricultural sense as:

"An undertaking devised to effect the reclamation or improvement of a particular area as by irrigation."
Webster's New International Dictionary, 2nd Ed., Un-
abridged.

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This definition has been quoted with favor in *State vs. Burns*, 77 P. 2d 215, Ariz. 1938. We must then look at each of the two types of applications to determine whether they fall within the allowed 5 c.f.s. of water for a single project.

In the first group the applications are made by individuals, but use of common facilities and contemplation of irrigation of a single common piece of ground lead to the conclusion that the entire operation is a single "project" under the withdrawal and as such is entitled to a single 5 c.f.s. application. This conclusion is reinforced by the provision in some of these applications requiring their assignment to a single company which clearly labels them as having a single source and objective and hence encompassing a single project within the meaning of the withdrawal proclamation. Such applications do not fall within the exception to the withdrawal.

The second type of applications present a closer question. These, although having common diversion point and canal system, are eventually to be used on separate tracts of land and none of them are required to be assigned to a common recipient.

It seems clear the purpose of the withdrawal was the prevention of large scale appropriations of water from the river; for the protection of the already established rights, the exception was made to allow individual, small appropriations which would not have an adverse effect on existing rights. The restriction to "one project" was, of course, to prevent the very thing attempted under the applications of group 1, the appropriation of a large amount of water for a single operation by filing for several small appropriations, then joining them to serve the larger unit.

Hence, if the applications of group 2 are determined to be for single, integrated projects, each with sufficient land to justify 5 c.f.s. of water and not intended to be a subterfuge for the creation of a single large project with a single large appropriation, they may be approved under the exception to the withdrawal proclamation.

Very truly yours,

/s/ Walter L. Hodge
WALTER L. HODGE
Attorney General

WRH/jrg