

July 26, 1950

Mr. Sharon Lamb
Water Commissioner
Mt. Carmel, Utah

Dear Sir: RE: EAST FORK VIRGIN RIVER DISTRIBUTION

Replying to your letter of July 16, I refer you to my letter of July 13. The State Engineer has no alternative other than to direct you to divide the water as set up in the Decree, until such time as the Decree might be amended by the courts. It is my understanding that this controversy between Mr. Morrison and Mr. Foote is now in the courts. When a decision is rendered, then you are to divide the water according to the court findings.

The records in this office show that J. W. Morrison, on August 14, 1946, filed application No. 17979 to appropriate .17 sec. ft. of water to be used from April 1 to October 1 of each year for irrigation purposes. This application has not been approved as of this date. Mr. Morrison cannot secure a Certificate of Appropriation until the application has been approved and the water put to use and proof of beneficial use made thereon.

It is noted that one I. L. Bowers did have a diligence right, with a priority date of 1890, and that of this .23 sec.-ft., 0.17 sec.-ft. may have been lost by nonuse. This, it appears, is the .17 sec.-ft. that Mr. Morrison filed on under Application No. 17979, but it does not give him the priority which Mr. Bowers may have lost. Mr. Morrison has the other .06 sec.-ft. of the .23 sec.-ft. right by purchase and this apparently has not been lost. However, if he has changed the point of diversion and place and nature of use it is incumbent upon him to file a change application showing such changes.

It is not the prerogative of the State Engineer to determine when a right is lost by nonuse. That is a matter for the courts to decide. As stated before, you are to divide the water according to the Decree until the Decree is amended by court decision.

Yours truly,

Harold A. Linke
STATE ENGINEER

By
L. C. Monson
CHIEF DEPUTY STATE ENGINEER

LCM/vm
cc-Mr. David L. Foote
Orderville, Utah