

July 27, 1936

Mr. J. P. May,
Roosevelt, Utah

*Duchesne Distr.
Uintah Distribution ✓*

Dear Mr. May:

REL: DRY GULCH IRRIGATION COMPANY

I am in receipt of your letter of July 14, handed to me by Governor Blood, who asked that I reply thereto. This I will do, feeling however that in most parts you are better advised in the premises than I. In general I note that you refer with considerable accuracy to the dates when the Indian Bureau filed suit against the white water users for a determination of the water rights on the Lakefork and Uintah rivers, etc. The answers herein given come from information contained in the files of this office.

It appears you are concerned over a public matter in which you say there is "danger ahead", because of a statutory limitation, that is - a 20-year practice which was set up by the court in decreeing water in the basin - that of appointing a water commissioner to distribute the water of the two streams referred to without proper jurisdiction, and you feel that if this practice is not stopped soon, this 20-year practice would set up a precedent which could not by law be set aside.

I think we are all familiar, and I think the records will show, that following the entering of the decree, Judge Johnson, as provided in the decree, appointed a water commissioner to distribute the water in accordance therewith. This practice was continued up to and including the irrigation season of 1930. Since then I am sure there has been no water commissioner appointed by the federal court, nor by this office except as I will further indicate.

In the early spring of 1931, the representatives of the white users and the U. S. Indian Bureau officials, as had been the procedure each spring since the signing of the decree, met in federal court for the purpose of again asking for the appointment of a Water Commissioner for the 1931 season. In this meeting the judge of the federal court refused to take further jurisdiction by the appointing of a Water Commissioner. Therefore, the interested parties attempted to get together and agree to the appointment of a commissioner by the State Engineer as provided by the state law. It appears that they were unable to agree, and without the aid of

the Indian Bureau, the white users on April 25, 1931 petitioned the State Engineer to appoint Mr. B. O. Colton commissioner to distribute the water in accordance with the provisions of the federal court decree. Mr. Colton was thereupon appointed commissioner by the State Engineer. By the letter of transmittal of the appointment, Mr. Colton was advised by the State Engineer that said appointment was not wholly satisfactory, because there was no assurance that he was going to receive in any way the cooperation of the Indian Bureau. Five days later, that is, on April 27, the Indian Bureau notified the State Engineer that there had been no agreement reached between their department and the white users as to the appointment of the Water Commissioner, and until such agreement was consummated the Indian Service was not authorized to submit to the jurisdiction of the commissioner appointed by the State Engineer, nor would they participate in any way in the payment of the services of a commissioner so appointed. Meanwhile, Mr. Colton by telephone notified the State Engineer that he could not accept the appointment.

On May 1, of the same year, Mr. Henderson, Engineer for the Indian Bureau, wrote to their supervising engineer, Mr. C. A. Ingle, to the effect that he had recently been in conference with Mr. Colton who had agreed to take over the duties as an unofficially appointed commissioner to divide the water as decreed by the federal court and without authority from the State Engineer. This arrangement was found to be acceptable to both the white users and the Indian Bureau.

On May 4, 1931, Mr. Colton gave official notice in writing to the State Engineer of his refusing the earlier appointment made as Water Commissioner, and set forth that the gentlemen's agreement between the Indian Bureau and the whites, under which he was to unofficially distribute the waters was operative pending completion of the two-year agreement between these parties. He also stated that as soon as this agreement was signed, the authority for appointing a commissioner would thereafter be placed in the State Engineer's office as provided by law.

Since 1931, Mr. Colton has been distributing the water in keeping with this gentlemen's agreement between the water users, themselves, from the foregoing I think you will conclude that the period during which the federal court assumed jurisdiction and appointed a Water Commissioner ended in the early spring of 1931. The question has been asked the State Engineer many times why this condition continues, and the answers have been invariably that there was no question but that the

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state had jurisdiction in this matter but if and when the engineer takes jurisdiction there will in all probability be a lawsuit between the Indian Bureau and the white, which the water users in the basin are not able to stand at this time, because of financial conditions.

As far as I have been able to learn, it appears that Mr. Colton, working under this gentlemen's agreement, is getting along extremely well with both the white and the Indian users. There is, however, some complaint as you explain in your letter, to the effect that the Indian Service is not at all times using their water to the greatest beneficial use. This may or may not be true; but, I wish to say that even in our best regulated systems we occasionally find these complaints, so apparently they are not common only to Uintah basin. The appointment of a commissioner by and with authority from the State Engineer would, to a considerable extent, eliminate such practices, if they occur; but as I have already explained, to secure this procedure of appointment would unquestionably result in a lawsuit, the costs of which the Uintah basin water users cannot meet at this time.

The attitude of the Indian Bureau, I think is very clearly set out in the Roosevelt Standard of September 17, 1931 wherein the editor quotes a letter to Mr. H. L. Allred and others, by Mr. William S. Post, Director of Irrigation, U. S. Indian Service. Because of your connection with the newspapers in the basin I am sure you will have available this letter. If not, and you desire a copy, I shall be glad to furnish it.

Yours very truly,

T. H. Humpherys,
STATE ENGINEER

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