

TAKES DEFINITE STAND ON USE OF BASIN WATER

EDITOR'S NOTE: The following letter, which is signed by William S. Post, director of Irrigation for the Indian Service, and directed to H. L. Allred, Lott Powell, A. G. Burton, W. K. Dye and J. C. Hacking, executive committee for the water users. The letter was drafted for the purpose to define the position of the Indian Service. It is a very definite stand and we feel that every water user should read and make a careful study of its contents:

Mr. H. L. Allred, Mr. Lott Powell, Mr. A. G. Burton, Mr. W. K. Dye and Mr. J. C. Hacking, executive committee acting for the defendant water users in the cases of United States vs. Dry Gulch Irrigation company, et al, and United States vs. Cedarview Irrigation company, et al, Gentlemen:

Following recent discussions in Salt Lake City about the enforcement of the decrees in the above cases for the protection of the water rights of the United States in relation to the Indians of the Uintah basin and the satisfaction of rights of the defendants out of the remainder of the water, I send you this letter to define the position of the Indian Service.

Up to this year from the entry of the preliminary injunction in 1916, the court has appointed a water master each year and given him instructions. The need for the water master was not so much to protect the rights of the United States, because a sufficient flow through the government ditches doubtless could have been insured by the very force of the injunction itself, or if, in any instance, it were disobeyed, by contempt or other appropriate proceedings. The water master was, however, deemed desirable in order first, to see that during a water shortage the ditches should be shut down enough to give the Indian lands a sufficient supply. This had to be done in the inverse order of the priorities of the defendants' ditches in order to insure fairness as between them. The second purpose of having the water master was to distribute fairly, in accordance to their priorities, the water to the defendants' ditches which should be left after supplying the In-

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dians' needs.

The court early this year decided that a water master was no longer necessary and so discharged him. This action, of course, means that the court intends to enforce the decrees whenever necessary other than by the appointment of a master.

Acting in accordance with this procedure, you will recall, it was suggested that the state engineer appoint a commissioner. This I was willing to consent to, provided that both the state engineer and the defendants in the cases expressly conceded that the state engineer would not act or claim to act, nor would the defendants or the claim that he acted or was entitled to act in the matter as of right. Your committee, however, felt that the matter of the state engineer's powers should be left open. I felt that I could not agree that a water master should be appointed in that way and suggested the present plan which was adopted. That plan is simply for the plaintiff and defendants to agree upon the water master and share in the expense of his employment.

This plan is in operation now and seems to be working well. It is properly suggested, however, that we ought, if possible, to reach an understanding as to future years. Here our position is and I think must be, that we have no authority to submit any determinations as to the federal rights or the administration of the federal decrees to state authority. This is, of course, merely the expression of a legal point of view and an idea of what is sound administrative policy and does not question, and is not meant to question, in any way the competency and fairness of state officials. As you know (article IV, section 3 of the Constitution puts the control of the property of the United States (including, of course, that of its Indian wards, whether it holds the legal title, as it does in this instance or not) in congress; and congress has given the secretary of the interior no authority to turn over that control to state agencies.

You will see that we of necessity must rely upon the decrees as they stand and ordinary meth-

ods of enforcing them. This leaves it for you to divide the remaining water among yourselves as best you can, taking care to see that the water for the Indian lands is available in the streams at their headgates. I suppose you could avail yourselves of the services of the state engineer if local procedure permits.

The practical changes that we are now faced with are, on the government's side, that the federal court water master no longer opens and shuts gates to protect the Indian lands, and, on your side, that participation by the government in the expense of the water master is left without any very clear foundation. We liked the old situation and, under it, felt entirely justified in making our contribution to the water master's salary and expenses. I feel that perhaps I may go further and say that I think we would still feel justified in participating to the same extent, provided a scheme could be worked out under which we could do so. This would involve giving us the same assurance that in any particular year the water for the Indian lands would be available and that nothing by way of a right to determine how much water was necessary, or anything else affecting the Indian's rights, should be conceded by the government to or in any way claimed by the defendants or the water-master they employ.

Perhaps it would be feasible for us to inform the water master at the beginning of the year as to the acreage for which we would want water and the amount necessary and then at the end of the season pay our proportionate share of the water master's salary and expense.

The foregoing expresses my view and that of Mr. Truesdell, but is, of course, subject to approval or disapproval of Washington.

Yours very truly,

Wm. S. Post, Director of
Irrigation.

Roosevelt
Standard

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