Boulder, Utah
July 7, 1936

Mr. T. H. Humpherys
State Engineer
Salt Lake City, Utah

Dear Sir:

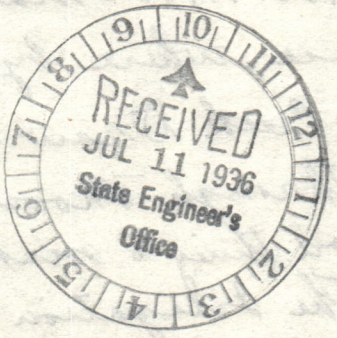
Will you please give me your opinion on the following question:

"A" has acquired the right to the use of water, however such use is appurtenant to a specific tract of land. "B" comes along and takes a stream from "A's" ditch, "continuously and openly" for a period of seven years, such taking ~~to~~ may be through "B's" intimidation of "A" and 'a's inability or indifference as to defending his rights; or through a neighborly act on the part of "A" to B. One opinion holds that through the law of "adversity" of use, the right to water so used by "B" becomes lawfully his. This party admits that rights to unappropriated waters can not be established except through compliance to the filing laws. Another opinion is that in the above case "A" would lose his right through abandonment and that the right would revert to the state and that "B" could only acquire a right in this case by filing an application in your office.

There is a further problem about the C. Moosman use of Deer Creek Water. Inasmuch as his 15.2 acres have been irrigated in the past from Deer Creek his "head-ditch" is made along the side of a hill and it would be a considerable task to convey his Boulder Water over on to this land. Acting on the advice of Mr. J. H. Clark, who is engaged by the Irrigation company to plan dividers and check-over them, I told Mr. Moosman that it would be permissible for him to exchange water from his Boulder creek right, for the necessary amount of Deer Creek water to Draw 100% on his 15.2 acres ~~on~~ but that he would have to deliver his Boulder water high enough up the system so as to not interfere with the rights of Mr. Lyman. Mr. Moosman is surveying a ditch below his place, whereby he can divert the water from W. Deer Creek Draw into Lyman's ditch - This draw passes through Moosman's field. Such an exchange would be a good thing to make less contaminated Culinary water below. The Irrigation Company expects Mr. Moosman to submit such exchange of water to them for their approval. ~~S~~Should he also apply to your office for permission to make such exchange?

over.

However if the case of "B" acquiring "A's" water through "adversity" use there would be no need for Mr. Mossman to make an exchange as he would have acquired a full right to Deer Creek even if he only had a supplementary right in Deer Creek by the Garrison Decree. There are at least a half-dozen similar situations and the above contention is being met with so if you could inform me on the question I should appreciate it very much.

Yours truly

Franklin C. Hansen