

August 31, 1959

Mr. Clifton W. Johnson
P. O. Box 347
Cedar City, Utah

Dear Clif:

RE: ESCALANTE VALLEY ADJUDICATION

This acknowledges receipt of your inquiry of August 27, 1959. The answers will be given by paragraph as you have indicated.

1. Your inquiry as to the completion of development on irrigation to September 30, 1959, would be answered as follows: Although adjudication proceedings specify an irrigation season for the area, this does not preclude the water commissioner, under distribution practice, allowing pumpage in other parts of the season if such pumpage does not interfere with existing rights and the water commissioner is satisfied that the use is beneficial as long as the overall use does not exceed the acre-feet pumpage per year. Although adjudication proceedings set definite limits and shouldn't be altered except by change and temporary change, the actual strict adherence to these limits would create such a voluminous work load that it would be impossible to effectively distribute the water. For practical purposes, therefore, distribution should be able to sidestep this procedure when it is sure that other rights will not be affected. It is necessary to have the adjudication limit to administer strictly if impairment of rights becomes a factor.

2. Your paragraph 2 inquires concerning the time a water users claim may be filed on a mother application. As soon as election to have the State Engineer prepare a water users claim is received in the State Engineer's Office, the burden of proof rests with the State Engineer. He then moves into the area and secures basic data for preparation of the water users claim. It is not necessary to wait for the completion of a water users claim before a change on this right can be filed. No segregation would be involved at this time as the right has been perfected. If the election is filed after the segregation and a change is filed then the water user must be sure that his project has been physically completed so that the election of the segregation or change can be incorporated into a water users claim. There can be no further development towards a segregation or change after the election has been made.

3. We direct you to continue to let Columbia Iron Mines pump from their well which was drilled and certificated under an application filed in a withdrawn area. We so direct because the continuance of use of this well is in the interest of the public and the amount of water is relatively small. Also the area in which the well is located is at best very remote and has little connection with any of the developed areas of Escalante Valley. The reason the proper proceeding has not been followed is the presence of the withdrawal order in Escalante Valley which would not permit the filing of proper applications but arbitrarily limits an area regardless of reason. As soon as the withdrawal order

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is lifted in Escalante Valley this situation can be corrected and a proper water right established.

4. Under paragraph 4 the evaluation on past irrigation use should be evaluated by using as a guide only the 20% fallow and 2 acre-feet per acre application of water. The field engineers should use their discretion in making their final determination on irrigated acreage. In this discretion field conditions should be considered as a common denominator as far as possible. If it is determined a crop actually was raised on an area it should perhaps be allowed even though it does not fit the above guide.

5. We are aware of the basic weakness of our certificates in mentioning incidental uses without any evaluation of those uses. This deletion undoubtedly in most instances is the result of lack of information supplied by proof engineers. We have to take some credence in the word of the farmer or his wife in knowing how many stock have been operated in the area in the past. We must bear in mind that a right can be established on the maximum use of stock and a right may exist even though at the present time a lesser number of stock are watered. There is little justification in our spending much effort in trying to evaluate the statement of the farmer or his wife because when the decree is published the neighbors and other users in the valley are made aware of the claims. They have a right of protest. If no protests are filed we would have very little basis on which to make a prolonged investigation as to the correctness of their claims.

There have been many instances when such protests have been filed and properly evaluated. Some exaggerated claims admittedly may secure a water right in this way but the result will not be serious. We suggest that you still allow and incorporate in the water users claim the stock claimed by the farmer or his wife and unless you can see something wrong that would warrant a further investigation I think this information should be included in the water users claim and processed in the final decree.

Yours truly,

Hubert C. Lambert
DEPUTY STATE ENGINEER

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