

August 16, 1940

Mr. J. T. Leigh
Cedar City, Utah

Dear Sir:

REL: COAL CREEK DISTRIBUTION

I have your letter of August 2, 1940, in which you raise the question as to whether the right of George H. Wood has been lost because it is not included in the decree adjudicating the waters of Coal Creek and tributaries.

In my opinion, it is your duty, as Water Commissioner, to enforce the decree which purports to adjudicate all of the rights on the creek, and you may not consider agreements, written or oral, entered into by water users before the entry of the decree. Section 100-4-9 (same as Section 29, c. 67, Laws of Utah 1919) provides in part, as follows:

"The filing of each statement by a claimant shall be considered notice to all persons of the claim of the party making the same, and any person failing to make and deliver such statement of claim to the clerk of the court within the time prescribed by law shall be forever barred and estopped from subsequently asserting any rights, and shall be held to have forfeited all rights to the use of the water theretofore claimed by him."

It is apparent from the foregoing that if Mr. Wood had a right before the decree was entered, he lost it by failing to file his Claim and assert it in the general adjudication suit.

In the event you are asked by water users to turn the water, which Mr. Wood is diverting from the head waters of Coal Creek, back into the stream, it will be your duty to do so.

Yours very truly,

T. H. Humpherys
STATE ENGINEER

EJS/jm
cc - Mr. George H. Wood
Cedar City, Utah

e
m