



THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY

T. H. HUMPHERYS
STATE ENGINEER

August 9, 1940

REL: COAL CREEK DISTRIBUTION

ATTENTION: MR. SKEEN

Memorandum for Office Study Only, by REID JERMAN

Water rights to the Coal Creek system were adjudicated, as provided by Chapter 67, Laws of Utah, 1919. Mr. George H. Wood was made party to this suit and in the State Engineer's determination, Chapter 5, it is noted that he was listed with a large number of other users as party defendants having filed Claims to the use of water from Coal creek and determined to have no right, title, interest, or claim, in or to any of the waters of said creek except to stock holders in one or more of the incorporated companies or by contract or agreement with one or more of the parties determined as having the right to the use of water from said creek.

In the decree the right referred to in Mr. Leigh's letter of August 2, which is attached, was not allowed. The question is, would Mr. Wood's right, if he had such, be lost because it was not recognized in this decree? See questions raised in Mr. Leigh's letter.

2/me
8/12/40

I have examined the correspondence relative to the George H. Wood right and have also checked the statute. In my opinion the Water Commissioner must enforce the decree and cannot at this time consider agreements written or oral entered into before the date of the decree as to the relative rights of water users. Section 100-4-9 (same as Section 29, chapter 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."

Section 100-4-15 (same as Section 35, chapter 67, Laws of Utah 1919) provides:

"Upon the completion of the hearing, after objections filed, the court shall enter judgment which shall determine and establish the rights of the several claimants to the use of the water of the river system or water source as provided in section 100-4-12."

It is apparent from the foregoing that if Wood ever had a right, he lost it by failing to assert it in the general adjudication suit.

vejs/vm

E. J. S.