

August 6, 1931.

Mr. R. E. Davis,
% W. L. Davis,
Willard, Utah.

Dear Sir:

RE: MILL DAM DIST.

Since your recent call at the office, with reference to distribution on Mill Dam ditch system, I have given the matter further study, have conferred with Mr. Jerman, and beg to set out my views as follows:

Under the provisions of the court decree the water users have the option of agreeing among themselves as to the appointment of their own water commissioner and distribution. Failing such agreement the decree provides that they are to notify the State Engineer, who will then proceed with the appointment of a water commissioner under the provisions of Chapter 100, Laws of Utah, 1925.

It would appear that no such agreement has been reached in the past as to distribution and, as to the present season, no notification was given to the State Engineer asking for the appointment of a commissioner. Complaints have been made that the water was not being taken in accordance with the decree but no definite information has been furnished the Engineer in sufficient detail so that an appeal to the court in contempt proceedings could be made with the least assurance of success.

Any procedure looking to the appointment of a water commissioner by the State Engineer must comply strictly with all the provisions of the law, and past experience indicates that the water users on Mill Dam system are not in a position to pay for the services of an outside engineer who could put in the time necessary to watch for illegal diversions of water.

It has been suggested that either the State Engineer or Mr. Jerman visit the system but there is no reason to suppose that such a visit will accomplish anything in a practical way which would even justify the slight cost.

R. E. D. - #2.

Some discussion was had as to the installation of headgates and measuring devices. I find that the report on the Mill Dam ditch system made by Mr. Jerman on July 1, 1930, indicates that, with slight exceptions, headgates of a usual satisfactory character have been installed.

The conditions on this system indicate that there is much more involved than the mere distribution of water. There is reason to suppose that there are factional differences which have existed in the past, are maintained at present, and apparently will continue in the future, these differences involving an effect on distribution far in excess of what is normally involved.

There is no question at all as to the superior jurisdiction of the court until a final decree has been entered. The court, however, cannot be expected to act except under due process of law, and this calls for definite evidence and testimony as to interference, which evidence and testimony would appear to be lacking. I do not consider that it is a function of the State Engineer to produce this testimony and evidence except through a water commissioner performing his usual routine duties. I also hold that it is not the function of a water commissioner to act as watchman sitting on guard over headgates for the purpose of watching for the stealing of water. As a practical proposition such a course on the part of a water commissioner would certainly lead anyone, who might desire to steal water, to refrain from such action during the time that the headgate was being watched.

There is a provision in the state law, Section 8410, in regard to the stealing of water. In view of the general situation it would seem to me that, when proper evidence can be obtained as to the stealing of water by any individual, such evidence should be laid before the proper officer, complaint issued, the offender arrested and punished by the court.

This office has, since the issuing of the decree, interested itself in obtaining proper distribution of the waters of Mill Dam system but up to date the time and effort expended have apparently produced no results whatever and conditions are as bad as at any time. It is, therefore, my considered opinion that, as a practical matter, the office can accomplish nothing to relieve the situation and should not be involved in the various differences apparently existing.

Yours very truly,

State Engineer.

GMB/E
CC-J. H. Mason.