

May 2, 1928.

Men. Geo. Christensen, Judge,
Seventh Judicial District,
Price, Utah.

Dear Judge Christensen:

RE: MUDDY CREEK DIST.

I have your kind letter of April 30 enclosing copy of application for appointment of a water commissioner on Muddy Creek and I would advise you as follows with reference to this matter:

I have taken the position all along that where a decree calls for the appointment by the court of a water commission I will not act except on agreement by all the water users or with the consent of the court first had. Last year the water users seemed to agree on the appointment of Mr. Case and had petitioned this office for his appointment. Through carelessness I had not checked up on the decree and so went ahead and appointed Mr. Case.

As regards the coming season I would say that the Rochester interests feel that Mr. Case would not make the division of water as they would like and on account of this feeling I advised Mr. Dalton that it seemed preferable to act under the decree until I was notified to the contrary.

I think that the real point at issue is the question of beneficial use made by the Emery users. It has been my practice with the various commissioners to instruct them, where necessary, to limit the amount of water to actual beneficial use even when this does not give the supply called for in the decree. It is my understanding that we have a Supreme Court decision requiring the actual definition of a right which seems to run counter to the proportionate division made in some decrees. There are also several Supreme Court decisions plainly indicating that beneficial use is to be the limit. In order that subsequent appropriators may have the use of water which would be wasted in carrying out the letter of the decree it has been my practice to order the distribution as above noted.

I am aware that this position of mine would appear to ignore that judgments of the court and for this reason I have tried to be as

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careful as possible not to bring this point to an issue in any particular instance. In the case of Muddy Creek I have fair reason to believe that the Emery people can satisfy their beneficial requirements, at least during the high water, on very much less than 15/16 of the flow and in the light of the decisions as above referred to I feel that the subsequent appropriators are not getting their full rights with a limit of 1/16 of the flow.

I hope in making the above frank statement of my position that you will believe in my desire to cooperate in every possible way with the courts and defer to them as far as in my power lies. Please let me have any advice or suggestions which may occur to you.

Yours very truly,

State Engineer.

CMB/E