

April 23, 1928.

Mr. D. W. Dalton,  
Price, Utah.

Dear Mr. Dalton:

RE: MUDDY CREEK DIST.

I have your letter of April 21 and note the position which you take with reference to distribution of water under the decree. In view of the fact that the Supreme Court seems to have taken the opposite view of the matter I hesitate to appoint Mr. Case to distribute the water according to the letter of the decree. If the water users at Emery are going to insist on that interpretation I am not sure that there is any need of having a commissioner.

There is another important angle to this matter which I cannot overlook. I have just examined the decree handed down by Judge Christensen in 1918 and find that it provides for the appointment of a commissioner by the court at any time upon application of either party. While the Caldwell & Erickson case allows the State Engineer to supersede a court commissioner I have only used that right when entirely agreeable to the court and when there was no conflict among the interested parties as to who should be appointed as commissioner.

It may be advisable for me to come down to Emery in the near future to explain my position. If the distribution of water is under my charge I should make every effort to see that the water users receive a proper amount for beneficial use. With that attitude I should expect an attitude on the part of the water users, who hold the first rights, of allowing the succeeding rights everything that was not essential for beneficial use of the first rights.

Yours very truly,

State Engineer.

GMB/E