

June 12, 1939

REL: SPANISH FORK RIVER DISTRIBUTION

Memorandum for Office Study Only, by B. F. Lofgren

On May 30, 1939, I investigated the controversy among R. H. Spencer, Indianola Irrigation Company and Simon Hugentobler, concerning the distribution of water from Clear creek, Rock creek and Thistle creek in Indianola, Sanpete county, as referred to in a letter to the State Engineer from D. J. Skeen, dated May 23, 1939.

From the findings of fact in the case of Rulon P. Starley as State Bank Commissioner vs. R. H. Spencer, et al. held October 23, 1936 in Sanpete county, and from discussions with R. H. Spencer and J. A. Houtz, secretary and treasurer of the Indianola Irrigation Company it appears that through a series of mortgages, foreclosures and transfers of water rights which at one time belonged to R. H. Spencer there has resulted an overlapping of claims to 115 shares of water distributed by the Indianola Irrigation Company and from that has arisen the dispute over the use of water represented by those shares. In December 1936 the court issued a decree setting out the relative value of such conflicting claims and restraining R. H. Spencer from assigning or disposing of stock in dispute until further order of the court. Prior to such restraining order, however, R. H. Spencer had mortgaged the disputed stock which has since been sold at sheriff's sale to I. M. Price.

The water master of the Indianola Irrigation Company has issued water tickets this season to the water users involved in the dispute in accordance with the court decree, i. e., the water turns are based on 55 shares for Simon Hugentobler, 60 shares for the North Sanpete Bank and 45 shares for the stock certificates No. 72 and 73 which have face values of 80 shares each but which are subordinate and subject to the said 55 shares and 60 shares according to court decree. A Mr. Spencer, a son of R. H. Spencer, is operating the farm of I. M. Price and claims that since I. M. Price owns certificates Nos. 72 and 73 he is entitled to a water turn based on 160 shares of stock, whereas his water ticket actually is based on only 45 shares. Mr. Spencer, the son, stated that he inquired of the water master which water turns were deducted from the full turn which formerly had been given to certificates No. 72 and 73, and from information he obtained he assumed he should take the water during the turn of Simon Hugentobler even though his water ticket did not include that time.

I discussed in detail with R. H. Spencer and his son the history of the disputed water rights and pointed out that the only authorization which Mr. Spencer, the son, had in taking any water whatever was the water ticket made out by the water master and that if the water ticket which he had did not give him the length turn he thought he should have, he should demand another ticket from the company, but that taking water in excess of that called for in his

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ticket, particularly when he knew it was assigned to another water user, was stealing. He stated that Lewis Larson of Manti, attorney of R. H. Spencer, had told him to go take as much water as he claimed under certificates No. 72 and 73. I pointed out that he personally was responsible for taking another person's water and was subject to arrest, but since I was sent only to obtain the facts I could not inform him of what action would be taken. I advised him for his own protection to obtain written instructions from I. M. Price, whose agent he claimed to be, before he takes any more water in excess of his water turn. He said he was following attorney Larson's instructions, and would probably take Hugentobler's water next turn.

According to R. H. Spencer, he was called into court about May 10, by the Irrigation Company, to show why he should not surrender Certificates No. 72 and 73, which are in dispute, but it was shown to the court that those certificates are not in his possession.

From the available facts it appears that Mr. Spencer, the son, is taking water assigned to Simon Hugentobler by the water master, without any authorization, but with the advice of an attorney. The water tickets appear to be made in accordance with court decree.

L/me