



TETON R.

## STATE of IDAHO

DEPARTMENT OF RECLAMATION

LYNN CRANDALL, WATERMASTER

IDAHO FALLS, IDAHO

WATER DISTRICT No. 36

Robert E. Smylie  
~~JOHN JORDAN~~ GOVERNOR

MARK R. KULP,  
STATE RECLAMATION ENGINEER

August 1, 1955

RECEIVED  
AUG 2 1955  
Department of Reclamation

Mr. Mark R. Kulp  
State Reclamation Engineer  
State House  
Boise, Idaho

Dear Mr. Kulp:

Some years ago a group of waterusers in Teton Basin on tributaries of Teton River had their lands taken into the Fremont-Madison Irrigation District and were allotted varying amounts of stored water in accordance with their desires. Their natural flow rights are of a later priority than those further down on Teton River and in years of deficient stream-flow their diversions would be cut off to supply the earlier rights downstream.

The Teton Basin users are at too high an elevation to receive any stored water directly from the Fremont-Madison District reservoirs, but such stored water can be delivered to the downstream users in lieu of natural flow retained in Teton Basin, and this has been done ever since the Teton Basin lands were annexed to the Fremont-Madison District.

A number of years after the original annexation of lands in Teton Basin to the Fremont-Madison District there were a few users in that area who petitioned the Fremont-Madison District to have their lands annexed to the District and this was done. Some criticism of this action was later made by the Teton Basin landowners who had first joined the District and as a result the Directors of that District have ceased to annex any more lands in Teton Basin.

In good water years there is sufficient stream-flow in Teton Basin to supply all the stored water rights but in years of deficient flow like the present year, the people who originally joined the District feel that they have established a right by prior use to make the exchange of natural flow for their storage as against those who joined the District at a later date.

Page 2  
Mark R. Kulp  
August 1, 1955

I would like the advice of the Attorney General's office whether there can be any priority of right to make such a use of natural flow in exchange for stored water based on the respective dates when the various users had their lands legally annexed to the Fremont-Madison District or whether all District landowners are equally entitled to a pro-rata share of the available natural flow to exchange for storage regardless of when they joined the District.

This is a currently pressing matter and an opinion at as early a date as possible will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Lynn Crandall".

Lynn Crandall  
Watermaster

cc: J. O. Kay, Victor  
C. D. Cooper, Driggs  
Holden & Holden, Idaho Falls  
extra copy to Kulp

HOLDEN & HOLDEN

ATTORNEYS AT LAW

IDAHO FIRST NATIONAL BANK BUILDING

IDAHO FALLS, IDAHO

TELEPHONE 4450

ARTHUR W. HOLDEN  
WILLIAM S. HOLDEN  
ROBERT B. HOLDEN  
R. VERN KIDWELL  
HOWARD R. STINSON  
REED A. WILLIAMS

AUGUST 2, 1955

RECEIVED  
AUG 3 1955  
Department of Reclamation

MR. MARK R. KULP  
STATE RECLAMATION ENGINEER  
STATE HOUSE  
BOISE, IDAHO

DEAR MR. KULP:

WE ARE IN RECEIPT OF COPY OF LETTER WRITTEN BY LYNN CRANDALL, WATERMASTER OF WATER DISTRICT No. 36, RELATIVE TO THE PROBLEMS OF TRAIL CREEK IRRIGATION COMPANY AND FREMONT-MADISON WATER.

WE NOTE THAT IN SUCH LETTER MR. CRANDALL REQUESTS THAT AN ATTORNEY GENERAL'S OPINION BE FURNISHED AS TO WHETHER THE RIGHTS OF THE LATER CLAIMANT CAN BE PRORATED UPON AVAILABLE NATURAL FLOW OF WATER.

FOR YOUR INFORMATION THE CLAIMANT HAS FILED A SUIT BY THE TERMS OF WHICH HE SEEKS TO ESTABLISH HIS RIGHTS IN TO THE TRAIL CREEK IRRIGATION COMPANY CANALS, SO THAT THE MATTER NOW WILL BE ATTENDED TO IN THE REGULAR COURSE OF JUDICIAL DETERMINATION. IN VIEW OF THIS FACT, IT IS OUR THOUGHT THAT THE COURTS WILL FURNISH THE DESIRED INFORMATION AS TO THE RESPECTIVE RIGHTS OF THE CLAIMANT UNDER THE SET OF FACTS NOW EXISTING.

WE WOULD CERTAINLY LIKE TO SEE THE ATTORNEY GENERAL'S OPINION, BUT WOULD ALSO RESERVE THE RIGHT TO SUBMIT ADDITIONAL INFORMATION WHICH WE FEEL IS VERY PERTINENT TO THIS PARTICULAR PROBLEM. THERE IS A VERY SERIOUS QUESTION OF ABANDONMENT OF WATER, PLUS VARIOUS OTHER LEGAL PROBLEMS WHICH WE THINK WILL BE DISPOSED OF IN THE PENDING CASE WHICH HAS BEEN FILED BY THE CLAIMANT. IN THE EVENT YOU DO PROCEED FOR AN ATTORNEY GENERAL'S OPINION, WE WILL BE HAPPY TO FURNISH THE REMAINDER OF THE INFORMATION WHICH DOES PERTAIN TO THIS PROBLEM. HOWEVER, IT WOULD APPEAR THAT THE PENDING SUIT WHICH HAS BEEN FILED IN TETON COUNTY WOULD TERMINATE THE PARTICULAR QUESTION INVOLVED.

VERY TRULY YOURS,

HOLDEN & HOLDEN

BY

*R. Vern Kidwell*  
R. VERN KIDWELL

RVK:JK

CC: ATTORNEY GENERAL  
LYNN CRANDALL

RECEIVED  
AUG 8 1955  
Department of Reclamation

August 5, 1955

Mr. Lynn Grandall  
Watermaster  
Water District #36  
Idaho Falls, Idaho

Dear Sir:

Concerning your inquiry of August 1st relating to certain water users in the Fremont-Madison District, as I understand the matter since talking with you by phone there were a number of users who came into that district after its formation and acquired certain rights to water stored in the reservoir which was constructed by the Federal authorities, and a second group who were annexed to the district and likewise acquired certain rights of user to the stored water, between which two groups the question now considered has arisen.

It has been the practice for some years to trade the rights of all of said users in the reservoir to the district users below the reservoir and in return to take an equal amount of water from the upper reaches of the Teton River and Creeks, where all the first mentioned users are located. Due to the water shortage along the river in the present season, the question as I understand it is, does the first group who came into the district have a priority over the second group of later comers if and when there is a shortage of water in said upper reaches which will not supply the users of both of said groups?

I also understand that the users of water from the Trail Creek Company are not concerned or involved in your question.

The said upper users cannot receive their water from the reservoir because it is at a lower elevation than their lands. I see no reason why the exchange of reservoir rights for equal amounts of water taken by direct diversion from the upper part of the river is not permissible, but I do not believe there is any right of priority existing between the two groups here involved. As I understand it, it is not a matter of shortage of water in the reservoir, but in the upper reaches of the stream. If this be true, I am unable to believe that the mere priority ~~of~~ dates of the various purchases of such stored water by the upper users created any priority in the taking of water from the

Mr. Lynn Crandall

-2-

August 5, 1955

C  
O  
P  
Y

river in lieu of such stored water. I believe it comparable to the situation arising between owners of ordinary commercial corporation stock when payment of profits, or dividends, by the corporation is proposed. In such a situation the stockholders all stand on the same footing, and I believe the same result occurs in the matter now discussed. If there were a shortage of water in the reservoir, that would present a different question, but as above stated I do not understand that any such shortage in the reservoir exists.

Trusting that the foregoing has answered the question which you have in mind, I am

Yours very truly,

J. R. SNEAD  
Assistant Attorney General

JRS:dm

cc: Mark Rulp  
Roy Thompson  
Holden & Holden