

Arnold Williams
XXXXXXXXXXXXXXXXXXXX

July 15, 1946

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

Dear Mr. Kulp:

In the Rexburg decree of the Sixth Judicial District, State of Idaho, dated 1910, the Boom Creek Canal Company was awarded 5,000 inches Sept. 15, 1901 priority from Boom Creek. Boom Creek (also known as Boone Creek) rises in Wyoming and is tributary to Fall River after crossing the Idaho line. In the vicinity of the Squirrel meadows in Wyoming east of Ashton there is a low divide between Boom Creek and Squirrel Creek, an adjacent stream to the south. Some years prior to 1910 the Boom Creek Canal Company built a ditch in Wyoming over this divide and dumped the Boom Creek water into Squirrel Creek in Wyoming; the water flowed down Squirrel Creek past the State line into Idaho and was diverted from Squirrel Creek in Idaho by the Boom Creek Canal Co. The Boom Creek Canal Company has no ditch or water rights adjudicated by the State of Wyoming.

The Squirrel Creek Irrigation Company has a decree of 1,000 inches of Sept. 1, 1901 from Squirrel Creek, which is two weeks earlier than the Boom Creek Canal Company decree. After mid-summer Squirrel Creek proper goes nearly dry and nearly all the water in it at such time comes thru the feeder canal from Boom Creek.

Relying on an opinion from F. A. Miller, now deceased, formerly attorney for the Fremont-Madison Irrigation District, we have for some years past assumed that all the water in Squirrel Creek when it crosses the State line was Squirrel Creek water irrespective of its source and have filled the right of the Squirrel Creek Irrigation Company before delivering any water to the Boom Creek Canal Company. The latter company is now shut off and contends that we should deliver to them the amount of water being delivered thru their Boom Creek feeder canal into Squirrel Creek in Wyoming.

The State Engineer of Wyoming advised my deputy that neither he or the Boom Creek Canal Company had any right to regulate or divert the waters of Boom Creek in Wyoming from their natural channel. The feeder channel needs some maintenance work done on it but the owners don't know whether to do it or not, if they can't get the water they deliver.

Page 2.
July 15, 1946

Will you please secure an opinion on this matter from the Attorney General's office as quickly as possible advising me what action I should take in delivering the water from Squirrel Creek.

Very truly yours,

Watermaster.



STATE OF IDAHO
OFFICE OF ATTORNEY GENERAL
BOISE

FRANK LANGLEY
ATTORNEY GENERAL

July 19, 1946

Mr. Mark R. Kulp
State Reclamation Engineer
Department of Reclamation
B U I L D I N G

Dear Mr. Kulp:

This is in reply to your letter of July 17 with an attached letter from Lynn Crandall, Watermaster, Water District No. 36 in which Mr. Crandall asks for an opinion of this office concerning the contents of his letter.

It appears that the Boom Creek Canal Company was awarded 5,000 inches of water under an adjudication dated in 1910 with a priority of appropriation as of September 15, 1901. And it further appears that the Squirrel Creek Irrigation Company has a decree of water from Squirrel Creek in the amount of 1,000 inches, priority date of appropriation being September 1, 1901. The Boom Creek Canal Company constructed an artificial channel diverting water from Boom Creek into Squirrel Creek, which channel was constructed in the State of Wyoming. The water comes into the State of Idaho in the Squirrel Creek Channel and the question is whether this water belongs to the Squirrel Creek Irrigation Company or to Boom Creek Canal Company.

I am of the opinion that the water belonging to the Boom Creek Canal Company even though it be diverted and runs through the Squirrel Creek channel is water belonging to the Boom Creek Canal Company.

Your attention is called to Section 41-105, Idaho Code Annotated which provides:

"The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; and water may be turned into any ditch, natural channel or waterway from reservoirs or other sources of water supply, and such water may be substituted or exchanged for an equal amount of water diverted

July 19, 1946

from the stream, creek or river into which such water flows, or any tributary thereof, but in reclaiming the water so mingled, or diverting water in lieu thereof from any such stream, creek, river or tributary, the amount of water to which prior appropriators may be entitled shall not be diminished, and due allowance shall be made for loss by evaporation and seepage."

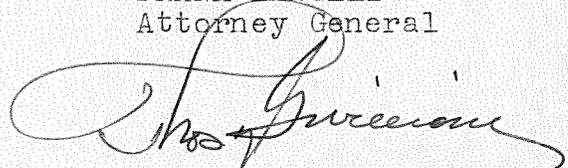
See Reno vs. Richards
32 Idaho 1

Berg vs. Twin Falls Canal Company
36 Idaho 62.

It is my opinion that unless the right to the use of the water of Boom Creek, diverted and permitted to flow down the channel of Squirrel Creek, has been abandoned by the water users of the Boom Creek Canal Company so that the right to such water has been lost, the water so diverted is subject to being reclaimed by the Boom Creek Canal Company and remains the water of such company.

Yours very truly,

FRANK LANGLEY
Attorney General



THOS. Y. GWILLIAM
Asst. Attorney General

TYG:dg



STATE OF IDAHO
OFFICE OF ATTORNEY GENERAL
BOISE

FRANK LANGLEY
ATTORNEY GENERAL

July 24, 1946

Mr. Mark R. Kulp
State Reclamation Engineer
Department of Reclamation
B U I L D I N G

Dear Mr. Kulp:

This is in reply to your letter of July 17 with an attached letter from Lynn Crandall, Watermaster, Water District No. 36 in which Mr. Crandall asks for an opinion of this office concerning the contents of his letter.

It appears that the Boom Creek Canal Company was awarded 5,000 inches of water under an adjudication dated in 1910 with a priority of appropriation as of September 15, 1901. And it further appears that the Squirrel Creek Irrigation Company has a decree of water from Squirrel Creek in the amount of 1,000 inches, priority date of appropriation being September 1, 1901. The Boom Creek Canal Company constructed an artificial channel diverting water from Boom Creek into Squirrel Creek, which channel was constructed in the State of Wyoming. The water comes into the State of Idaho in the Squirrel Creek Channel and the question is whether this water belongs to the Squirrel Creek Irrigation Company or to Boom Creek Canal Company.

I am of the opinion that the water belonging to the Boom Creek Canal Company even though it be diverted and runs through the Squirrel Creek channel is water belonging to the Boom Creek Canal Company.

Your attention is called to Section 41-105, Idaho Code Annotated which provides:

"The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; and water may be turned into any ditch, natural channel or waterway from reservoirs or other sources of water supply, and such water may be substituted or exchanged for an equal amount of water diverted

Mark R. Kulp

- 2 -

July 24, 1946

from the stream, creek or river into which such water flows, or any tributary thereof, but in reclaiming the water so mingled, or diverting water in lieu thereof from any such stream, creek, river or tributary, the amount of water to which prior appropriators may be entitled shall not be diminished, and due allowance shall be made for loss by evaporation and seepage."

See Reno vs. Richards
32 Idaho 1

Berg vs. Twin Falls Canal Company
36 Idaho 62.

It is my opinion that unless the right to the use of the water of Boom Creek, diverted and permitted to flow down the channel of Squirrel Creek, has been abandoned by the water users of the Boom Creek Canal Company so that the right to such water has been lost, the water so diverted is subject to being reclaimed by the Boom Creek Canal Company and remains the water of such company.

Yours very truly,



FRANK LANGLEY
Attorney General

FL:TYG:dg

July 26, 1946

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

Dear Mr. Crandall:

The enclosed opinion from the
Attorney General fails to advise as to
how to administer an illegal diversion
in Wyoming.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

K:A