

March 28, 1946

Honorable Grover A. Giles  
Attorney General  
State of Utah  
B u i l d i n g

Dear Mr. Giles:

Attached to this letter is a Proclamation which the State Engineer proposes to submit to the Governor. Its purpose is to restore to appropriation certain waters which are tributary to the Bear River Drainage Area.

In 1938 Governor Elwood withdrew all the waters tributary to the Bear River, excluded only isolated water holes and springs which did not contribute materially to the supply.

The purpose of this withdrawal order was undoubtedly to assure the U. S. Bureau of Reclamation that it could proceed with a comprehensive plan to develop the Bear River without interference caused by the filing of numerous nuisance applications. Administration of water rights on the Bear River by the State Engineer has made it evident that appropriations for domestic and stock watering purposes ought to be permitted.

This Proclamation proposes, under the authority of Section 100-8-2, to restore the right of the public to appropriate water from the named sources for domestic and stock watering purposes.

I here again state that there may be some doubt that the Governor has the power to withdraw water from appropriation for limited purposes while permitting appropriations for other purposes. This is covered in my letter in reference to the Proclamation on the Beryl District which has this day been submitted to you. I shall, of course, be glad to discuss these matters further if you so desire.

Section 100-8-2 U.C.A. 1943 expressly provides that waters withdrawn by Proclamation of the Governor may be restored by the Governor upon the recommendation of the State Engineer. The only doubt that can be raised is whether or not the Governor must totally withdraw the water for all purposes and when he restores it must restore it for all purposes or whether he can restore the right to appropriate water for a limited purpose only. Certainly we cannot, without interfering with the work of the U. S. Bureau of Reclamation, restore all of the water for all purposes.