

DEPARTMENT OF THE INTERIOR
UNITED STATES INDIAN SERVICE

19

Reno, Nevada, Oct. 1, 1911

P r e s e n t :

MR. DIETZ, MR. JOHNSON,
MR. CREEL and MR. McBRIDE.

MR. CREEL: The object of having you gentlemen meet tonight is to talk over the Ruby Valley land and water matter, and if possible to arrive at some definite proposition concerning it.

MR. DIETZ: I am glad to have this meeting, but I am not prepared to take any action; I haven't the authority in that respect, that is, for the making of stipulations, etc. Did you arrive at a definite proposition, Mr. McBRIDE?

MR. McBRIDE: No, I couldn't come to anything definite. We are willing to do anything within reason to settle the thing up. I told Mr. Creel here, in one way I can't say as far as justice is concerned, that we ought to do anything but just let it ride. We are willing, though, to go beyond that and meet you more than half way. I don't really know what is exactly expected of us.

MR. DIETZ: I do not know as I would be prepared to say. The legal matters are not put up to me. I handle the engineering features and construction. I made a report--Mr. Johnson here made a report to me--and it was sent to Washington and is probably resting in the legal archives there. They might

Johnson report

send a man out here. I don't know, I have a number of legal matters here in Nevada and in Utah. A man was out at Ft. Hall I hoped to get, but he was called to Arizona and left me. I thought he was going down there on this matter. Mr. Reeves was out, too. Mr. Reeves, by the way, has been appointed in Conner's place. I am not prepared to discuss the Ruby Valley matter from the standpoint of any stipulations.

MR. JOHNSON: The thing to do is to have the Indian Office appoint some one.

MR. McBRIDE: If some one, well, whether it would be in the engineering department or the Indian department, could be authorized to either accept or reject absolutely it could be settled up. Mr. Croel suggested that I write out just what we would be willing to do. Well, we could hardly do that; a person don't like to give more than they have to. If we go ahead and assume that a certain thing is going to be done--it might not be, and it would be wasted time under the conditions. We would be willing to give anything reasonable, but we would want to know that things were going to be carried out as agreed on. I don't see in the first place why we should be forced to give anything. There is the whole sum and substance of it. I don't know as there is anything out there that we have

done against the Indians, but if we went ahead and gave something it might look as if we wanted to cover something up. On the other hand, if we want to do something for the Indians--there is no one sympathized with them more than I do--though we have had any amount of trouble with them. I am satisfied that they have been misled in past years by promises being made to them and not being kept. They don't understand: if they think they own this water we claim it is not our fault they believe that. If you would want them to be helped out by giving them a place to live, we are willing enough. We can state we started out in good faith and took up the water before the Indians were on the land. We took out our point of diversion and used this water and the Indians began to cut our fences up there, we caught them in the act. We complained to Mr. Asbury, and afterward they began to cut our ditches. They would cut the ditch and put a dam straight across it and not let a drop of water come down to us. We lost two acres that way. I appealed to Mr. Asbury, but he didn't do anything. I said I would have them arrested if they didn't stop using the water and would appeal to the courts, and after that he promised to do something, but Asbury never had done anything, though perhaps he tried. I think he didn't have any authority to enforce a measure. I know the Indians were down on Mr. Asbury for his efforts to try to get them to stop. They

came and said to us, "How much you pay him, Asbury?" We cut the hay there one year; we did that after they refused to pay the lease money. We considered \$10 for this 40 acres tract just a nominal amount; we didn't try to drive them off.

MR. DIETZ: Did you get that land from the state?

MR. McBRIDE: From Mr. Wines.

MR. JOHNSON: When he got it were not the Indians living on it?

MR. McBRIDE: No.

MR. DIETZ: I thought they were.

MR. McBRIDE: I haven't seen the records but I understand from different ones in the valley they made affidavits that the Indians were living on that land. Mr. Wines says absolutely they were not. He took it in 1907.

MR. JOHNSON: From the appearance of those houses they seem to have been there a good many years. Of course all Indian houses look old, but those look much older than the ordinary ones.

MR. McBRIDE: My understanding is from what Mr. Wines says.

As I told Mr. Creel, the other boys would do something if we could be sure that those Indians would leave us alone and not cut our ditches. We would be willing even

to turn that 40 acres over to them.

MR. PIETS: That would not do much good without the water.

MR. McBRIDE: Well, that would go with it. That is, the vested right. That would go with the land. The boundaries of that can be very easily decided, that is, the exact portion covered by this vested right.

MR. DISTE: How many acres have you available down there?

MR. McBRIDE: Well, it depends on how deep we can tap it. We expect to build a dam across a narrow place in the lake.

MR. DISTE: Of course you have got a great deal of run off, the lake is so well up.

MR. JOHNSON: What is the average flow of that stream during the month of July and August?

MR. McBRIDE: I had some measurements made but I have not been able to find them. They are in the state engineer's office and are evidently slipped away in some of the papers.

MR. JOHNSON: How many readings were made of that?

MR. McBRIDE: I don't know.

MR. DISTE: Jordan started out with the Indians there, he has been out there at least three times. I am sure he was out there early in the spring before the high water.

He is in the state now, Jordan is.

MR. McBRIDE: I don't know how many times he was out there.

MR. NIEMI: While of course there are a good many legal questions, I don't think there is any doubt but that you people have moral and perhaps legal rights too. I think it would be well if our legal department would take it in hand and look into it.

MR. JOHNSON: Well, there is the question of the Indians residing on that tract. If they resided there prior to the time of Wines' taking it over, then the Indians have all the moral right, and it would not seem that you were conceding much in letting them have it. I don't know when they arrived there. I know that the houses are on the tract; I made the survey, and know that much. As to the date of their arrival there, the best way is to take the testimony of the oldest inhabitants.

MR. McBRIDE: There are so many people that are willing to testify to things. I know for a fact that pretty nearly every man might say something to that effect. But if they cannot get up and say where that 40 acre tract is--how can they testify accurately; if they don't know where the lines are?

MR. JOHNSON: They would know the oldest house. Doesn't it belong to Joe Tomoco--isn't that the name?

MR. McBRIDE: You mean the present house.

MR. JOHNSON: Those houses look particularly old to me.

MR. McBRIDE: I don't know about that part of it.

MR. DIETZ: You say that you would be willing to release that 40 to them--then what would be left to dispute?

MR. McBRIDE: It is really up to me to get the right-of-way for the ditch. That is all I am concerned about.

MR. DIETZ: Would the Indians claim you would be using their water in that ditch?

MR. McBRIDE: That would be up to the state engineer. I think it was a great mistake on our part, I think one reason we have had so much trouble is because we didn't have them arrested. If we had had them arrested they would have respected the laws, but the idea is that we have gotten ourselves into a mess because we didn't arrest them.

MR. JOHNSON: It would have been a good idea to bring it to a head. The next best thing is to do it now.

MR. McBRIDE: That 40 acres, we have not paid for it yet, but we have an understanding we can get it from Mr. Wines--Mr. Ira D. Wines.

MR. DIETZ: You have other holdings?

MR. McBRIDE: We have desert entries. We could stand on our rights right now and if the Indians cut our ditches they certainly could be held liable the same as any

one else. We never have disputed the actual vested right. They claim that we would not let them take water this year for this 40 acre tract. There was any amount of water going down that stream, there was plenty to irrigate that 40 and then some. We didn't get that water, and they told Mr. Creel that they didn't.

MR. CREEL: I did not state this year but in previous years their alfalfa had died out. The driver who took me over that land told me it was all once in alfalfa but had died out on account of no water.

MR. MORRIS: The Indian ditch, as it is called, they claim the whole ditch now. We don't care, we are willing to let them have that ditch. They kept the water and would not let us have it. They are high on the stream, so I don't see where they could establish that we took it away from them any year. They tore out our box. There was that stream of water going into the ditch.

MR. JOHNSON: You are higher up on the stream than they are.

MR. MORRIS: The point of diversion, yes.

MR. JOHNSON: It can easily be unfair either way unless there is some systematic way of dividing that water: there is always going to be trouble and it is going to be pretty hard to establish who has been taking water until we know who owns the water.

MR. McBRIDE: If the Indians expect to get any water out of that application they have filed it might establish it until there was an adjudication of the water. I would suggest that either the Indian department or the engineering department should ask for an adjudication on the stream.

MR. DIETS: I understood from Mr. Asbury that it was merely to establish their rights by appropriation.

MR. McBRIDE: The only way their vested rights could be established would be through an adjudication.

MR. JOHNSON: If they had applied for a vested right it would have made a different proposition.

MR. McBRIDE: The only question there is to establish the right they have on that land.

MR. JOHNSON: How are you going to enforce it after it is established?

MR. McBRIDE: If we buy this 40 acre tract with the understanding that they don't interfere, if we appeal to the courts we could be protected. If we can get it settled so we don't have to do that we are willing. We could buy the land--Mr. Wines' rights--or if the government wanted to go ahead and fight it out there is no need to buy it.

MR. JOHNSON: If Wines has not a right to it, when we get him to quit his claim to the land it is not conceding anything.

MR. McBRIDE: Well, as far as that goes, I would just as soon let the government and Mr. Wines fight it out an acre right down to dollars and cents and say what the forty is worth.

MR. DIETZ: This ditch is built?

MR. McBRIDE: It is built with their verbal consent in the presence of witnesses. I want my own point of diversion: I don't want anything to do with the Indians, let them handle their own water.

MR. JOHNSON: That structure will not do to measure water with. You have got have correct weirs.

MR. McBRIDE: The state engineer requires them to be put in. That is part of the adjudication. That point of diversion was taken as the easiest point to control the water.

MR. JOHNSON: How many acres do you anticipate down there?

MR. McBRIDE: Two thousand.

MR. DIETZ: Is there any question about the Indians' prior rights on that part they cultivate?

MR. McBRIDE: You mean the vested right? No, all of those little tracts have been put in since we put in our application.

MR. DIETZ: Is it the forty on which they have a vested right?

MR. McBRIDE: Yes. I don't know, I have never measured it, but I think the boundaries can be determined. I expect to make a survey myself.

MR. DIETS: How many Indians are there?

MR. McBRIDE: Mr. Croel could answer that better than I could.

MR. CROEL: There are about 110 in the whole valley. About 20 there, I think.

MR. McBRIDE: The simplest way for us would be to buy that right-of-way, just leave it to appraisers and we pay whatever they say. I tried to get that right-of-way from Mr. Asbury but it went by the board.

MR. DIETS: It may be that the Indians are balking. They are hard to handle. It is like leading a horse to water, but you can't make him drink. I guess those Indians are pretty hard to handle, anyway.

MR. JOHNSON: It would be to your interest to get that settled without any animosity on the part of the Indians on account of the labor situation.

MR. McBRIDE: As far as that is concerned, we don't care. I was out there myself and tried to get the Indians to come down and work. So far as that is concerned I would just as soon not have them. It may be because of their feeling against us that they won't work.

MR. JOHNSON: At Fernley they have been sending

automobiles to the reservation to get the Indians to pay for \$4.00 a day.

MR. McBRIDE: Well, they don't want to work for us.

MR. JOHNSON: Can you make a rough guess at the low water in that stream?

MR. McBRIDE: Well, at the time you want to irrigate--it is pretty hard to say. No, I never measured it exactly. These are some of the readings I am anxious to get. This year there was more than the ordinary year.

MR. JOHNSON: When will Jordan be in Reno? Perhaps we could get the records of the charts and readings, etc.

MR. McBRIDE: I wish to say if the government would want to take over our water rights, I don't feel we should turn it over for nothing. We should have some reasonable compensation.

MR. DITZ: I don't believe they would, unless the water right were determined.

MR. McBRIDE: That would be an easy matter.

MR. JOHNSON: How is this year compared with past years?

MR. McBRIDE: It is high all over Elko County.

MR. JOHNSON: Do you know of a similar stream in Elko County where the records have been kept for a number of years?

MR. McBRIDE: Well, I imagine Lamaille Creek would be about as good as any. They kept the record for two years that I know of. On some streams down lower, it would not be a good point on account of so many streams coming in.

MR. JOHNSON: How about Elko Creek?

MR. McBRIDE: I don't know about that. I don't think it heads in the mountains as high as Rub.

I think any of the creeks would give an idea of this up in the Ruby Mountains. Secret Creek would be all right.

I don't know what the other boys would be willing to do, but I would be willing to get out and let them have it, if they wanted to. I look at it this way: The only reason we would buy that 40 would be to satisfy them and not have any trouble. If it was a white man I would have him arrested, but if we had the Indians arrested once we would have to keep it up.

MR. DIEHL: Of course if you had them arrested it would probably be carried to the Federal court.

The thing to do is to get a legal adviser out here and if they want to enter into any stipulations or buy you out or get undisputed water for the Indians, they could do it.

MR. JOHNSON: There should be a re-survey.

MR. CREEL: I would say that, knowing what I do

about the finances of the Department, they would not consider buying it at all.

MR. DIETZ: What was the figure, \$40 an acre?

MR. McBRIDE: \$50 an acre from Mr. Wines.

MR. DIETZ: Didn't Mr. Asbury recommend buying it?

MR. CREEB: It was only the 40 acre tract. They wanted to trade their land for scrip and go somewhere else.

MR. DIETZ: Do you think the Wines would be willing to sell their holdings too.

MR. McBRIDE: Well, the old Wines ranch, I don't know anything about that.

MR. DIETZ: I shall write the Office again and suggest that if they see fit to do so they send a man out here.

MR. McBRIDE: It should be settled up this winter. This year we had considerable trouble getting the ditches. I am about sick of it, myself.

MR. DIETZ: Sure, I understand.

MR. McBRIDE: I would like to have protection. We shall have to take it into court.

MR. CREEB: The thing that is holding up this matter is that Colonel Dorrington, on my suggestion, wants to hold up any action in the courts until we could see if we could not settle out of court.

MR. McBRIDE: That is the 40 acres tract; that doesn't help the matter with the Indians as far as I can see.

MR. DIETZ: Mr. McBride has stated that he would be willing to buy that 40 acre tract providing the Indians could be placed on their good behavior.

MR. McBRIDE: Yes.

MR. DIETZ: The only way is to determine their rights and hold them to it.

MR. McBRIDE: Let the suit be brought and have the question determined between the government and Mr. Wines. We supposed we could have the right-of-way for this land. We could give them a piece of land above the lake--to keep their land all together.

MR. JOHNSON: You can't do anything until you know the amount of water in the stream.

MR. McBRIDE: I don't see why we should be compelled to give up any of our water on account of this new land they have taken up.

MR. DIEHL: I don't see why, if the use of the land is subsequent to yours.

MR. McBRIDE: It would be better to settle by adjudication. We raised this point with the engineer and Mr. Asbury. What I do think is wrong is to let these Indians go ahead and plant crops and have them think that

they have water. I consider it wrong to take the water away after they have planted crops. I told Mr. Asbury so, but he never did anything.

MR. DIETZ: Did they never use any water in the early days, outside of this 40 acre tract?

MR. McBRIDE: I could not say. In the early days they probably did, but that has all lapsed, as after five years it is abandoned. I know it has not been used for twenty years.

I would say in this matter that I have my patent. But the other boys didn't get theirs. If they are being held up on account of this water controversy, it is a mistake, because I am the one that wants to get the right of way. My water application was granted. I don't know why the other boys don't get their patents.

MR. DIETZ: Did they apply at the same time you did?

MR. McBRIDE: Yes, at the same time, and I don't know why they are held up. I am the one trying to get the right-of-way for this ditch. I have twenty second feet of water there. If they are holding up the other boys patents on account of this right-of-way it won't do any good.

MR. CREECH: As I understand it, the matter will rest until we can get some one out here.

MR. DIETZ: First I think we should go ahead
on that land question, to settle the suit.
