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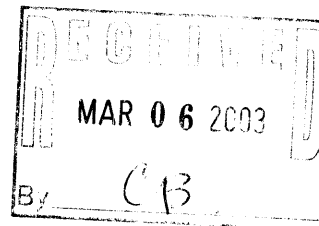
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Attorneys for Plaintiffs



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHARLES SPIEGEL and KATHLEEN)
 M. SPIEGEL, Husband and Wife,)
 Plaintiffs,)

vs.)

FRANK LEW, a single person,)
 Defendant.)

Case No. 33099

STIPULATION AND ORDER

COME NOW the parties, by and through their attorneys
 of record, and stipulate and agree as follows:

1. Plaintiffs are to be specifically restrained
 and enjoined during the pendency of this action from taking
 any affirmative act to injure, damage or destroy defendant's
 dam on Cottonwood Creek, or from taking any other action which
 would interfere with defendant's use of up to a maximum of two
 (2) cubic feet per second of water from said creek.

2. Defendant is to be specifically restrained and
 enjoined from any affirmative act or omission which would in-
 terfere with plaintiffs' right to utilize any and all waters
 in excess of two (2) cubic feet per second from Cottonwood
 Creek during the pendency of this action.

3. The foregoing restraints are to apply to the
 parties to this action, their officers, agents, servants and
 employees, and upon those persons in active concert or parti-
 cipation with them who receive actual notice of this Stipulation
 and Order by personal service or otherwise.

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4. During the pendency of this action, the parties stipulate and agree that a dam or other proper structure, together with an accurate gauge or water meter will be installed at the present dam site located on Cottonwood Creek on the property of Mr. Weatley. This structure and device shall be constructed and installed with all due deliberate haste and cooperation by and between the parties; said structure and device will be situated and operated so as to allow no more than two (2) cubic feet per second of water from Cottonwood Creek to flow into the diversion ditches of the defendant; and said structure and device will operate so as to allow any and all waters in excess of two (2) cubic feet per second to flow through the natural stream channel of Cottonwood Creek to the plaintiffs' property.

It is further stipulated and agreed by and between the parties that all costs and expenses for the purchase and installation of said device will be divided equally, and that the prevailing party in this action will be awarded said expenditures as costs.

5. It is further stipulated and agreed that during the interim period before the foregoing dam, structure and device are installed, that the defendant will not divert waters in excess of two (2) cubic feet per second from Cottonwood Creek onto his property, and that the plaintiffs are in the meanwhile entitled to any waters from Cottonwood Creek in excess of two (2) cubic feet per second; and, further, that the parties will fully cooperate in complying with this provision by taking those reasonably necessary steps to insure that this provision is complied with through reasonably agreed measuring devices available, and such modifications to the present dam as may be necessary.

6. It is further stipulated and agreed that none of the foregoing in any way constitutes a waiver, express or implied, or an admission as to the facts, contentions, or merits

of this case, and is made without prejudice to the assertions and rights of the parties.

7. It is expressly understood that this agreement shall be in full force and effect during the pendency of this action and is fully enforceable by all the remedies provided by law.

RACINE, HUNTLEY & OLSON

By: W. Marcus W. Nye
W. Marcus W. Nye of the Firm
Attorneys for Plaintiffs

WHITTIER & JARMAN

By: Ronald J. Jarman
Ronald J. Jarman
Attorneys for Defendant

O R D E R

Upon reading the foregoing and good cause appearing therefore, and after a partial hearing on the merits for preliminary injunctions requested by the parties, and upon an oral stipulation taken in Open Court on the 1st day of July, 1975, containing the general terms and substance of the foregoing, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the terms and conditions of the foregoing Stipulation are hereby Ordered throughout the pendency of this action.

DATED this 17 day of July, 1975.

Arthur P. Oliver
Arthur P. Oliver - District Judge