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Tim Luke
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, Idaho 83720-0098



Dear Tim;

In response to Lee Sim's letter to you dated July 5, 2001, I would like to point out some things that I disagree with.

I am enclosing a videotape of the scroll from the guaging station and my interpretation of it from April 26 to May 17, 2001. After May 17 the scroll agrees with the datapod data which you sent to me so I didn't draw the rest of it. The datapod data starts on May 2 at 11:20 a.m. The scroll shows that about 2 hours before that a large stream of water was diverted above the guaging station. This is the stream which I show on page 4, center right, in the complaint which I sent to you on May 30. To estimate how big this stream was, consider that the datapod shows that on May 8 at 4:00 p.m. the guage height was 1.034 and there was 0 water in the creek and at 9:00 p.m. the guage height was 1.257 and there was 24.42 cfs. Using this to show the relationship between the guage and actual flow we might say that 0.01 on the guage represents about 1 cfs.

The scroll shows that 2 hours before the datapod data started that the creek dropped from 1.32 down to 1.25 which probably represents about 7 cfs in the stream. The scroll shows that this stream was put back in the creek in the afternoon on May 12.

Mr. Sim says that Vern is doing the best he can with the measuring devices he has to work with. Actually the Protocol which was set up between the two state agencies on June 18, 1998 says that in the spring the Utah Commissioner will measure the water at the "temporary weir" which is just below the guaging station and all of the diversions above the temporary weir and add them together to determine the total flow of the creek. As shown in my May 30, 2001 complaint and in the movie which Vern made accusing me of stealing water on April 22 and May 9, the "temporary weir" was removed from the creek and Vern did not use it.

The datapod data does not include the stream above the guaging station, which was no small item, so the numbers Mr. Sim gives are defective in that respect both in the amount on the 2 or 3 days which he allows but also in the number of days that the water should have gone to Idaho and did not. In fact, the scroll shows that the water should probably have gone to Idaho before May 2.

I hate to harp on the possibility that Utah is being deceitful but the fact that Mr. Sim did not send you the data from one day earlier indicates that he was trying to hide this fact.

The State Engineer is suing me for stealing a tiny stream of water on May 9. On July 5, I sent them a request for admissions, one of which was ; Admit that there was more than 20 cfs on May 9, 2001. They denied it. I also requested that they provide all documents which might be used to support their denial. Their answer was that they have no documents. Obviously they had this datapod data on July 5 or they couldn't have sent it to you. The datapod shows that every hour on May 9 there was more than 20 cfs at the guaging station besides the stream above. The scroll shows that there was more than 20 also. They are refusing to provide me with documents because they don't want the court to see the documents. I very much appreciate you sending me this copy of this data.

The datapod confirms the measurements which I gave in my May 30 complaint. On May 8, just before dark I roughly measured 27 cfs in the headgate where the "temporary weir" should have been, the datapod shows 24.7 cfs at 10:00 p.m. On May 9 at 6:00 p.m. it shows 30 cfs which is what I said in the complaint. On May 10 at about 6:00p.m. the datapod shows 35 cfs, I calculated 36. On May 11, I went to Twin Falls in the morning and when I got home that evening I calculated about 46 cfs which is also confirmed by the datapod. All of my measurements are also confirmed by the scroll.

Vern turned the water to Idaho somewhat after noon on May 12 as can be seen on the scroll by the jog in the line. This is shown as about a 6 cfs drop in the datapod at 1:00 p.m. when he apparently turned some water out above the guaging station until about 7:00p.m. when the creek jumped to 52 cfs. There was apparently 52 cfs when the creek was turned to Idaho. My complaint says 50. I probably under estimated the size of the stream in the ditch above the guaging station since the datapod shows the creek jumping 7 cfs when the stream was shut off . This is the same thing as the scroll says.

Mr. Sim says that Vern was doing the best he could with the measuring devices which were available. He didn't turn the water to Idaho until there was 52 cfs. Obviously I was able to measure the creek. I am sure that Vern could measure it also, which is probably why 7 cfs was turned out above the guaging station on May 2 before the State Engineers made their measurement. If there was 20 cfs on April 30 as the scroll indicates, that would make another 10 days at 20 cfs = 400 acre feet, besides the 300 which I showed in my complaint, which is a total of 700 acre feet that was diverted in Utah after the creek got up to 20 cfs. There is no reason Vern could not measure the water.

Although the water was not all turned to Idaho until about 7:00 p.m. on May 12, I counted it as 33 cfs because that is what it measured on May 13 at 8:00 a.m. at the Idaho weir, Mr. Sim claims that there was 1116 acre feet delivered to Idaho before the creek was split which he claims happened on May 22. His calculations were apparently based on the datapod data. The decree

says that 560 acre feet should be delivered to Idaho before the creek is split. The datapod does not show how much water was delivered to Idaho. Clear Creek has considerable channel losses between the guaging station and the Idaho weir. Although 52 cfs was turned down the channel on May 12 afternoon, I only measured 33 cfs at the Idaho weir at 8:00 a.m. on May 13 when the datapod showed 41 cfs. That would be a loss of 8 cfs, which is not unusual. In my May 30 complaint the bottom photo on page 6 shows 38 cfs at about 8:00 p.m. when the datapod shows 48 cfs and the scroll also shows much more than in the morning. My measurements were consistent with the datapod and scroll. The losses of 20+ cfs on May 16 and 17 would indicate that water was being diverted in Utah.

My measurements show that 560 acre feet were delivered on May 17 and the creek should have been split on the morning of May 18. It was my understanding that they were taking water in Utah on May 16 and 17. There was much more water going past my house than there was at the Idaho weir. I was told that Vern was in Nevada so I did not talk to him. On May 21, I was put in the hospital with broken ribs and Max Booth came to see me and told me that there was very little water reaching Idaho. My list of deliveries show how much water was measured at the Idaho weir after that. The datapod shows that there was more than 17 cfs at the guaging station until June 13 or 14, but there was no water at the Idaho weir after June 5.

The Utah State Engineer is sueing me for allegedly stealing water on May 28, and Vern wrote an affidavit saying there was 35 cfs in the total stream that day, with 15 cfs as Utah's share. The datapod shows 50 cfs on May 28. Vern's movie shows the creek below the guaging station and I believe there was 50 cfs. When the creek dropped down to 36 cfs it should have all gone to Idaho for the 12 day run. That never happened. If we allow 5-7 cfs for channel losses, it should have gone to Idaho on May 31 for 12 days until June 11.

Using the datapod data and subtracting 7 cfs for reasonable channel loss the following chart shows how much water should have gone to Idaho after May 23 and the amount that actually was delivered to Idaho.

DATE	DATAPOD	-7 CFS	57%	DELIVERED
May 23	50	43	24	11.6
24	50	43	24	13.3
25	50	43	24	13.3
26	52	45	25	13.3
27	52	45	25	11.6
28	50	43	25	11.6
29	49	42	24	8.3
30	45	38	21	8.3

			100%	
	31	41	34	8.3
June	1	40	33	8.3
	2	40	33	8.3
	3	36	29	8.3
	4	33	26	11.6
	5	29	22	11.6
	6	26	19	0
	7	24	17	
	8	24	17	
	9	22	15	
	10	22	15	
	11	21	14	
		TOTAL	466	147.7

466-147.7 = 318.3 x 2 = 636 acre feet was not delivered to Idaho after May 23 which should have been. As you can see on my list of deliveries, Idaho received 1100 acre feet and more than that was improperly diverted in Utah during the two time periods before May 12 and after May 23.

Mr. Sim excuses Vern because this data was not available to him at the time he was turning the water. It was not available to me either but I was able to measure the water.

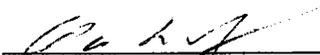
Mr. Sim excuses Vern because the measuring devices are inadequate. Vern intentionally removed the "temporary weir" from the creek to try and prevent me from measuring the water. Vern is not a victim of the circumstances or condition of the weir. As pointed out in my May 30 complaint, Vern did not follow any of the rules set up in the protocol for determining when to deliver the water to Idaho.

Mr. Sim says that all of the water users in Utah except me support Vern. Bear in mind that means Kempton, Campbell and Sessions. The place above the gauging station, which is run by Sessions, has 0.5 cfs decreed to it on 40 acres. When the water should have gone to Idaho this year Vern turned him 7 cfs for 10 days. No wonder he votes for Vern. Mont Campbell irrigated several hundred acres this year besides what he has a right to irrigate including a lot of ground in Idaho where he has no right to. No wonder he votes for Vern. Vern Kempton irrigated hundreds of acres this year which he has no right to. I irrigated nothing and was accused of stealing water.

On the morning of May 12 I went to see Vern. He was in Mont Campbell's yard. When he saw me driving up he went and hid behind Mont's shop. On two other occasions I tried to contact Vern and was unable to. The protocol says that it is Vern's responsibility to contact me in the spring and post the measurements at the Naf Store. Mr. Sim's letter is a response to my May 30

complaint so he obviously had seen the picture of the water diverted above the guaging station, yet he selected the data which he sent to you so as to conceal the actual total amount in the creek. This says something about Mr. Sim's intentions.

Sincerely,



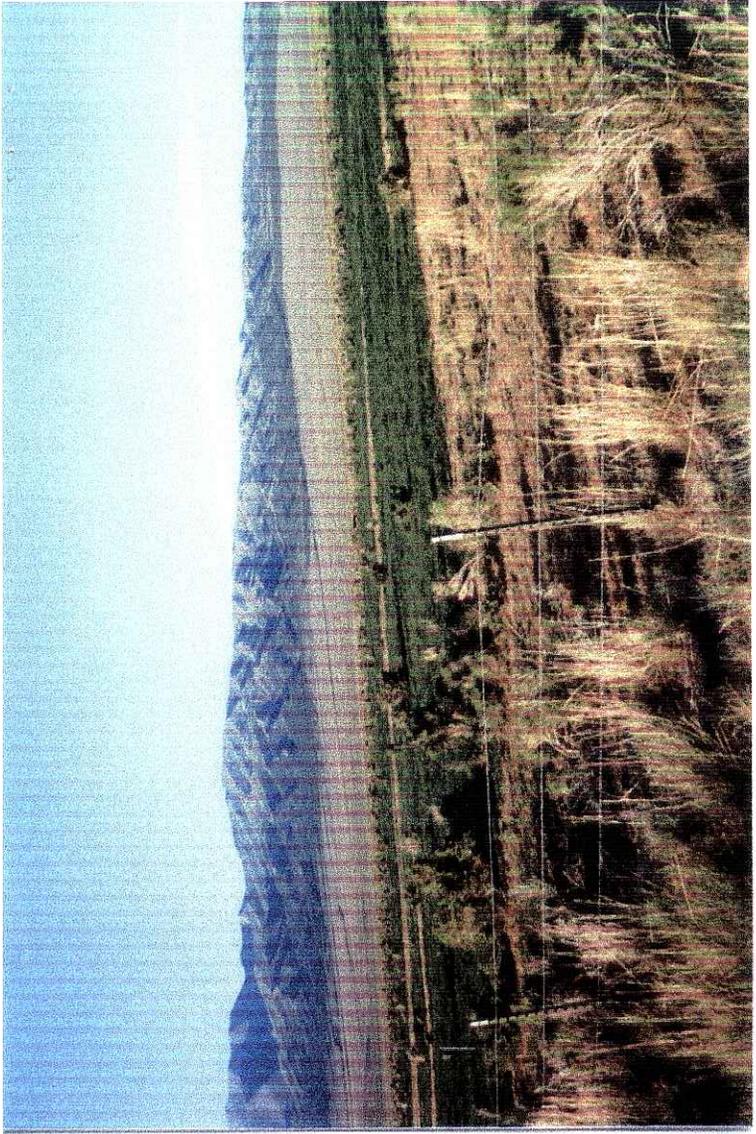
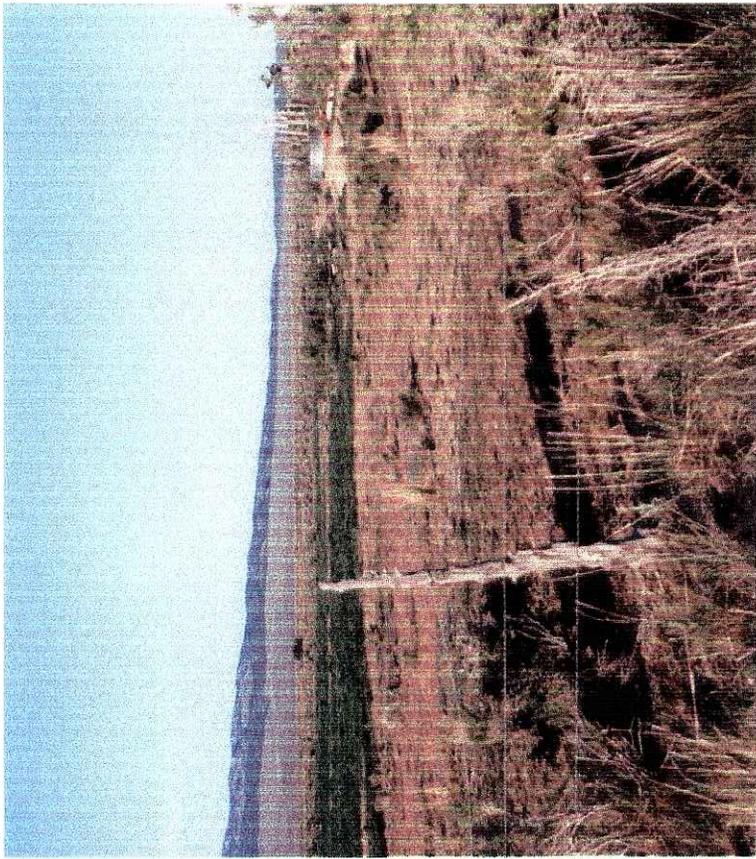
DAVE SUNDBERG

CLEAR CREEK WATER , 2001

USERS HOLMGREN SESSIONS HOBSON+HOSKINS STEWART HIGLEY TOTAL

Date	HOLMGREN	SESSIONS	HOBSON+HOSKINS	STEWART	HIGLEY	TOTAL
MAY 12	33cfs					33
13	27	3.1	3			33.1
14	36	3.5		0.5		40
15	37	3.5	3.2	4	6	53.7
16	38	3.5	3.2	5	6.5	56.2
17	36	3.5	3.5	4	6.7	53.7
18	36	3.5	3.5	3	7	53
19	31	3.5	3.2	2	3.6	43.3
20	31	3.5	3.2	2	3	42.7
21	NO MEASUREMENT					
22	NO MEASUREMENT					
23	8.5	3.1				11.6
24	10.2 estimate	3.1				13.3
25	10.2 estimate	3.1				13.3
26	10.2 measured	3.1				13.3
27	8.5	3.1				11.6
28	8.5	3.1				11.6
29	6.9	1.4				8.3
30	6.9	1.4				8.3
JUNE 1	6.9	1.4				8.3
2	6.9	1.4				8.3
3	6.9	1.4				8.3
4	10.2	1.4				11.6
5	10.2	1.4				11.6
TOTAL	416	56	22.8	20.5	32.8	548.1

Prepared by Dave Sundberg for Idaho Department of Water Resources



CAMPBELLS GARDENS IN IDAHO WAS IRRIGATED AS FAR AS THE EYE CAN SEE FROM THE ROAD

