

TO: ALLEN MERRITT
FROM: FRANK HITCHCOCK
DATE: MAY 22, 1996
RE: MEETING AT NAF STORE WITH CLEAR CREEK USERS AND UTAH AGENCIES.

As you asked me to last Friday, May 17, I went to the Naf Store to represent the region in a meeting of the Utah regulatory agencies and Clear Creek water users as a result of the Snake River Basin Adjudication Court Order in CASE NO. 92-00014 ORDER PROVIDING FOR PRELIMINARY INJUNCTIVE RELIEF.

There wasn't any attempt to have the people attending sign a sheet or introduce anyone so I will simply identify speakers as I can in the following text. I did introduce myself to each person and I got business cards from two of the three Utah agency staff people.

The discussion began with the Utah Water Resources representative asking what the issue is in view of the judge's order. The response was along the lines of how the water is diverted in Utah. He got a consensus of sorts and then began to review the facts of the water diversions in Utah as he understood them.

The by-laws of the Naf Irrigation Company were cited as stating that the Clear Creek water is to be measured at "the stage crossing". This is circa 1912. The son of Guy Sundberg quoted from a three ring binder throughout the meeting that appeared to have a number of documents in it. He is a shareholder on Clear Creek in Utah.

It was difficult to follow the citations from the decrees quoted by different parties because they cite the judge's name rather than the plaintiff and the defendant.

It was stated that the POD isn't listed in the 1901 decree but is considered to be on the north side of the section 36 section line. This statement led to a general set of comments regarding the portions of the creek to be distributed between the users.

Statements were made by Steve Holmgren and Sundberg about the number of days available and due to Utah and Idaho users. There was discussion about the shares in Naf Irrigation Company and who has what percent.

As a result of this turn in the discussion there was mention of three CFS loss in the creek. Comments began on this issue and the first one was to cite the Company by-laws regarding turning any water that goes below the lane in the amount of 6 cfs. Holmgren said that he gets billed for water but none reaches his property.

Then there was discussion about where the Clear Creek water is to

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be measured for the Idaho turn. The statement was made that the Idaho Weir located one half mile north of the border is the place where the measurement is to be taken. The weir was described as being 10 feet across the main channel and that 560 acre feet is the total to be turned.

Tim Luke commented that there is no water district or watermaster in Idaho and that as a result no one is authorized to distribute in Idaho. Holmgren said that he had been on his ground since 1948 and the same ditch rider had always delivered his Clear Creek right and there had been no difficulty.

The Utah Deputy AG said that in his conversations with the lawyers for the parties identified in the order that he could identify an issue that appeared to be where is the POD? Where is it to be measured? He felt that a side issue was the distribution of the water between Utah and Idaho.

Laverne Kempton, the Utah watermaster, discussed the original USGS gauge location versus where the measurement is taken now. No data was taken (measured) at that point until last year. He described the weir as a 10 foot Cippoletti concrete weir. Sundgren stated that the problem is was there a measurement taken last year at that point?

Sundgren said that he understood that if the flow was over 20 cfs it was to go to Idaho. Kempton said that Allen Merritt observed the weir and said that he saw no problem and that (it) could be taken a little lower. Sundgren said that there needed to be a record. That is, a physical record like a recorder would make.

The Utah WR rep said a permanent device like a continuous recorder could be set up but the critical issue is the cost which he thought would be approximately \$1300. He felt that this would eliminate the biggest question. Holmgren commented that he thought that the site of the original recorder was washed out in 1983 or so when they had approximately 137 CFS came down. Kempton said that there is enough water right now that he has been splitting the rights.

The expense could be shared amongst the users was the opinion of the Utah rep. Maybe they could split the cost along the lines of the split in the water use stated to be 57% lower users and 43% upper users. He thought that he had seen USGS figures of \$8,000 per measuring station. Time Luke suggested that in Idaho they are sometimes able to get matching funds.

Kempton said that the PODs are historically at the same points and that Guy Sundberg always measured "down there" which he clarified to be the six foot weir at the "stage crossing". In the last several years measurement was up above. There is no boundary at

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the section 36 line the Jensen house or is it Mont Campbell's shop.

Then there was a shift to the amount of water used as cited in the decree by Judge Christiansen. The quote was at item #6 of the decree that the amount was awarded to Naf Irrigation Company. The first 2.66 CFS went to John Naf in Idaho. The comment was mad that it is this right that Harold Jones wants to take in Idaho. Is this a Utah water right ieven if the POU is in Idaho? The question was raised as to the POU specified in Idaho? The POD is still in Utah.

The statement was made that this usage was made by Ward's house or the birch tree. Also, that this is where Ray Jones water is delivered or the Naf Irrigation Company water. Jones want to escape the by-laws and measure "down here". Kempton said he is to turn 57% to Idaho and that is what he measures to individual users and the company.

The problem was then stated to be when the water is used up the creek in the spring and none is available to Idaho. The company by-laws don't say where to measure. What about the 3 CFS loss?

Tim Luke asked if all users weren't sharing in the loss of the 3 CFS. The users (?) don't want to take the loss. The Jones share is taken there (?) the rest of the company water is up there (?).

The Utah State Engineer's Office rep said that Utah doesn't dictate how delivery companies control their internal affairs. Despite the judge's order they would only abide by the order if it makes sense. They are trying to figure out how best to approach the order since they have a phona conference with the Idaho people and Allen Merritt on Thursday in the morning.

He went on to say that in the Commissioner's report at #2 (?) Clear Creek is to be measured at Mont's shop. The parties agreed at some point in the most recent court schedule that 9 CFS is the amount to be measured (?). It is in the order that the parties agreed on turns. I asked him to cite the passage he was quoting. He said it was at page three, paragraph two. Sundberg said that there was no discussion of measurement and that the Utah diversions should have measurement devices.

The issue was framed again as being where the Jones water is measured. Nine CFS at Mont's shop the same as doing it at the section line of 36. That hasn't happened yet but maybe it will bey July of this season. Utah doesn't have to follow the terms of the order and perhaps Jones would have to go to court in Utah. The feeling of the Utah agency reps is that the Naf Irrigation Company water can be delivered at any point.

In their adjudication of the Utah rights as reviewed and

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recommended they can take the water at any point and its the company's call as to when. I asked them to identify the year and the date of the decree. Its 1965. Its called the West Box Elder Adjudication. The Snake River Division. Points of diversion were identified in the proposed report but its never been decreed.

Does the distribution interfere with Idaho users? In Utah, the commissioner (watermaster?) would still take direction from the company.

Tim Luke said that he would want records of the Idaho deliveries and the minutes of the annual meetings of the company. The Idaho decree allows for election of a watermaster. Clear Creek is turned on the 12th to Idaho.

Kempton called the Arimo right holder. He said that he isn't responsible for delivery of water when there isn't any ability for the water to get there. He said that no Clear Creek water can go by the Holmgren Land and Livestock ground. No water can reach the Arimo lands without going through H.L. & L. meadows.

The Utah rep said that Utah does share a commissioner with Wyoming and Colorado and that these matters are taken care of at an annual meeting.

Tim Luke said that there is no authority to deliver Jones water. He said that reading between the lines of what he was hearing thus far he felt that there were other problems of delivery as well. He said that Idaho wasn't concerned with Naf deliveries. However, he would recommend that an Idaho water district be activated to give structure and responsibility for the usages.

Holmgren said that his neighbor Reid Stewart would have to have the means to divert the Clear Creek water in order to receive his right. Stewart replied that a measuring device had been set up for him. He said that the device hasn't been washed out and that it is functional.

A description of the Clear Creek channel as it passes through H.L. & L. lands was given as a combination of sloughs, etc in Steve Holmgren's fields so that no one can tell where the water is without going up there. If there was an Idaho commissioner could that person turn the water through the measuring gauge.

Holmgren said that the only way the water can get to Stewart's ground is by subing off the H.L. & L. meadows. Kempton said that there is no way that water could get to the Stewart weir and he had been to the site this season.

The Utah State Engineer's rep said that he questioned the need for a commissioner in Utah as there didn't appear to be any issues in Utah or in the Naf Irrigation Company. The Utah water resources rep said that it felt to him that there was a basic distrust of the reading of the gauge.

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Stewart said that when Guy Sundberg was delivering water he always got his water. Sundberg said that the issue is the measurement of the water at the "stage crossing" versus where the measurement is actually being taken. He didn't think that the watermaster had turned the water in the last few years into the ditch above the Idaho weir.

Kempton asked for someone to tell him how to make the correct split of water from the Idaho weir to the two ditches that serve Jones and Sessions. There was discussion about the waste water that comes in above the ditch that both parties have a right in plus H. L. & L..

Kempton asked how Sessions can irrigate out of this ditch that also serves other yet he wants more water represented by the return flow off his field. Tim Luke asked if Sessions had a separate waste water right filed. If not then the water is again to all the users of the ditch as a benefit. Kempton went on to say that he has a measuring weir to take readings where the ditches separate.

Holmgren said that H. L. & L. fills a pond then Sessions takes from the pond which is measured at the side of the road as a separate measurement.

Kempton said that guys who have complaints don't come to see him.

The Utah State Engineer's rep said that they would recognize the judge's request but that the users of the water should make the request. He said that the person turning the water should be elected by everybody on the creek. Kempton said that this is all in the minutes of the meeting. The distribution is informal.

Tim Luke suggested that a protocol should be developed to address present concerns. The comment was made that the situation didn't require two watermasters.

The store owner, Hoskins, said that last year everything had washed out down at Reid Stewart's place. Stewart asked why the former person delivering the water could get the water down to his place it couldn't be done now? The Utah water resources rep said that if there wasn't a headgate then there is no responsibility for the person turning the water to get it there.

Tim Luke said that anybody controlling Idaho headgates isn't formally authorized although the director can appoint someone to do so. To do so would leave a person open to liability. The plaintiff's lawyer has had success in suing the state previously.

The meeting broke up at this point and the Utah agency reps, myself and Tim went with Kempton, Stewart, and Sundberg to view the

TO: STATE OFFICE

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diversions in Idaho and Utah. There was a good deal of discussion at each stop between the participants. I took the opportunity to take photos at each diversion to add to the Clear Creek claim files since the water is running strongly through the weirs and ditches.

We returned to the Naf store as a group after 4 pm. I asked the Utah reps if they would provide this office with the adjudication map sheets of the ground along Clear Creek and they promised to do so. I have added to the Clear Creek SRBA map files the exhibits of the map(s) they brought to the meeting which they gave to me as they are partial sheets but do show much of the Utah ground adjacent to the natural channel.