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DISTRICT COURT SREA  
TWIN FALLS CO IDAHO  
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\* \* \* \* \*

In Re the General Adjudication of Rights to )  
the Use of Water from the Snake River )  
Basin Water System. )

HAROLD JONES and RAY JONES, )

Plaintiffs, )

vs. )

CASE NO. 92-00014

NAF IRRIGATION COMPANY, a Utah )  
Corporation; LARRY KEMPTON in his )  
capacity as an individual and as )  
president of NAF IRRIGATION )  
COMPANY; LAVERNE KEMPTON, )  
individually and in his capacity as )  
Water Master and Ditchrider for NAF )  
IRRIGATION COMPANY; MONTE )  
CAMPBELL as an individual; and JEFF )  
SESSIONS doing business as ROUND )  
MOUNTAIN RANCH, )

ORDER PROVIDING FOR  
PRELIMINARY INJUNCTIVE RELIEF

Defendants. )

\* \* \* \* \*

Counsel for the plaintiffs, Patrick D. Brown of Hepworth, Lezamiz &  
Hohnhorst, Chtd.

Counsel for the defendants, Boyd L. Baggett and Roger D. Ling of Ling,  
Nielsen & Robinson.

ORDER PROVIDING FOR PRELIMINARY INJUNCTIVE RELIEF - 1

On Wednesday, May 8 and Thursday, May 9, 1996, the court conducted a hearing on the plaintiffs' Application and Motion for Entry of a Preliminary Injunction. On Friday, May 10, 1996, and before completing the evidentiary hearing, this court entered an oral ruling granting preliminary injunctive relief. The oral ruling and this written Order, which is based on the oral ruling, are necessary in order to most fairly and expeditiously provide immediate and necessary interim relief, to avoid waste and irreparable injury, and to preserve the status quo to the greatest extent possible given the facts presented to date.

IT IS THEREFORE ORDERED, under I.R.C.P. 65 and this court's inherent equitable powers, that the following shall occur:

1. Counsel for the plaintiffs, Patrick D. Brown, and counsel for the defendants, Boyd Baggett and Roger Ling, shall immediately contact the appropriate personnel at the Idaho Department of Water Resources and the Utah Division of Water Resources for the purpose of immediately attempting to convene a joint meeting and in order to put together a plan for the comprehensive distribution of the waters of Clear Creek, among and between those having rights to use the waters of Clear Creek in Box Elder County, Utah, and Cassia County, Idaho. The plan shall include provisions to have one or more persons act as watermaster to distribute water among the users of Clear Creek for the 1996 irrigation season, and it is preferred that such person or persons shall not be the parties to this lawsuit, unless by agreement between the parties to this lawsuit. Counsel for the parties shall keep the court informed about progress towards reaching a plan and shall diligently strive to have a plan in place by no later than Friday, May 17, 1996 at 5:00 p.m.

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2. Until a plan is in place and operating, Laverne Kempton is ordered to act as watermaster and to administer the distribution of water among the rightholders on Clear Creek according to all applicable court decrees, including the decree entered by Judge Christensen concerning the Utah water rights, the decree entered by Judge Cavannah concerning the Idaho water rights, and the decree entered by Judge Johnson concerning the distribution of water among the Utah and Idaho water rights and water users on Clear Creek. During the 1996 irrigation season, the terms of the decrees shall be followed except; (a) by consent of the parties, if Clear Creek declines to 9 cfs after July 1, 1996, measured at a point known to the court and the parties as "Monte's Shop" or the "Old Stage Crossing," it shall be distributed on turns; and (b) as otherwise provided in this Order.

3. Laverne Kempton shall keep written records of his activities as watermaster. Laverne Kempton shall communicate with individual water users on Clear Creek in order to give the particular user notice about when water will be delivered, adjusted and curtailed for that user's rights or shares, and in order to otherwise operate the water system according to the decrees and this Order. Laverne Kempton shall not communicate with one water user about another user's rights except to the extent necessary to fulfill his duties under this Order and the decrees. The parties and the witnesses listed below shall be entitled to contact Laverne Kempton in order to inform him of their needs with regard to delivery, curtailment and adjustment of their particular rights and shares. The parties and witnesses shall not deliver, curtail or adjust their own diversions or those of other users and shall have all such work done by Laverne Kempton, unless there is an emergency.

ORDER PROVIDING FOR PRELIMINARY INJUNCTIVE RELIEF - 3

4. On reasonable request, Laverne Kempton shall provide, and Dave Sundberg shall have, all reasonable access to review and observe how Laverne Kempton is administering the waters on Clear Creek and to check diversions, measurements, and other matters relating to the administration of water on Clear Creek. Dave Sundberg shall be allowed to contact Laverne Kempton and to review, observe, check diversions, and measurements only for the purpose of obtaining information about the administration of the water resources on Clear Creek but shall not administer the resource himself. If discrepancies, disputes or concerns arise about how Laverne Kempton is administering the resource, Laverne Kempton shall not attempt to resolve the discrepancies with Dave Sundberg but shall inform counsel for the defendants of the problems and allow counsel to handle the situation. In the same manner, Dave Sundberg shall not attempt to resolve disputes or discrepancies with Laverne Kempton but shall contact counsel for plaintiffs in order to allow counsel to handle the situation.

5. During the 1996 irrigation season, the Idaho water rights shall be delivered according to the Cavannah decree except as follows:

- a. The plaintiffs shall be allowed to use the 70" of their water right dated June 14, 1911, measured at the point where water is diverted, either upon their property known as the Upper Place, or they may elect to divert the water at a place known as the Idaho Weir for use upon their property known as the Lower Place;
- b. Of the water decreed with a priority date of November 23, 1911, and known to the parties as the "Settler's" water, the first 320" of water

available under the November 23, 1911 priority date shall be divided equally between the Naf Store and the plaintiffs. The plaintiffs shall be entitled to use up to 160" of that water. 80" of the 160" for the plaintiffs shall be used on the Upper Place and the other 80" shall be used on the Lower Place by diversion through the Idaho Weir;

- c. After the above water with a November 23, 1911 priority date is filled, defendant Jeff Sessions shall be entitled to 80" of water for use on Round Mountain Ranch by diversion through the Idaho Weir;
- d. After the above water is filled, the plaintiffs shall be entitled to 90" of water with a priority date of July 14, 1912, which may be used on either the Upper Place or Lower Place.
- e. After the above water is filled, defendant Jeff Sessions shall be entitled to 80" of water diverted at the Idaho Weir for use on Round Mountain Ranch.
- f. Plaintiffs have the right to 70" of water decreed to the Lower Place with priority of June 1, 1881, and defendant Jeff Sessions has the right to 85" of water, with priority of June 1, <sup>1882</sup> ~~1992~~, for use on the Round Mountain Ranch, both of which are diverted through the Idaho Weir. Plaintiffs and Sessions shall continue to combine the 70" and 85," as they have done in the past, and rotate the use of those rights on turns of three (3) equal days a piece on the Lower Place and on Round Mountain Ranch.

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6. The plaintiffs are enjoined from seeking interim relief from the Idaho Department of Water Resources to curtail the use of the dam on Round Mountain Ranch. This Order does not enjoin the plaintiffs or defendants from pursuing the ordinary course of reconsideration or appeals of decisions by the Idaho Department of Water Resources concerning defendant Jeff Sessions' Application for a Dam Permit or Application to Transfer Water Rights.

7. The plaintiffs, and the witnesses for the plaintiffs, are hereby enjoined and restrained from having any contact with the defendants <sup>Dave Sundberg</sup> ~~or one another~~ except as provided in this Order. Likewise, the defendants are hereby enjoined and restrained from having any contact with the plaintiffs and the plaintiffs witnesses <sup>Laverne Kempton</sup> ~~or one another~~, except as provided by this Order. Contact with Laverne Kempton may occur and Laverne Kempton may contact the plaintiffs and the plaintiffs' witnesses as provided in paragraph No. 2, above. For the purpose of this paragraph, the plaintiffs shall be considered Harold Jones and Ray Jones and their spouses, Beth Jones and Karen Jones respectively. The plaintiffs' witnesses are Dave Sundberg and Nadyne Sundberg. The defendants are Laverne Kempton, Larry Kempton, Mont Campbell and Jeff Sessions.

8. Larry Kempton shall deliver Nadyne Sundberg's horses to the property of Dave Sundberg and put them in the corral on Dave Sundberg's property on Monday, May 13, 1996.

9. Mont Campbell shall be given access across the property of Dave Sundberg to put in a replacement weir. The replacement weir shall be in place and in operating order by Friday, May 17, 1996. In the event Mont Campbell is unable to have

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the replacement weir in by that time, counsel for the defendants shall contact counsel for the plaintiffs to attempt to agree about access after that time.

10. The parties are enjoined and restrained from contacting the Idaho Department of Water Resources or the Utah Division of Water Resources about distribution on Clear Creek, except through their respective counsel.

11. The parties and witnesses are not enjoined and restrained under this Order from having contact with one another in order to accomplish the objectives set forth in paragraph No. 1 of this Order, but such contact shall occur only in the presence of, and with the consent of, counsel for the respective parties.

12. Nothing in this Order shall constitute a waiver of any claim or defense previously asserted in this case. Further this Order and water use hereunder, shall not be used or considered as a basis for asserting any claim or defense, or waiver thereof, relating to rights in or the use of water.

13. Counsel for the respective parties shall serve this Order upon their clients and return affidavits to the court proving such service as soon as possible.

IT IS SO ORDERED.

Dated this 15 day of May, 1996.

  
Honorable Daniel C. Hurlbutt  
District Judge

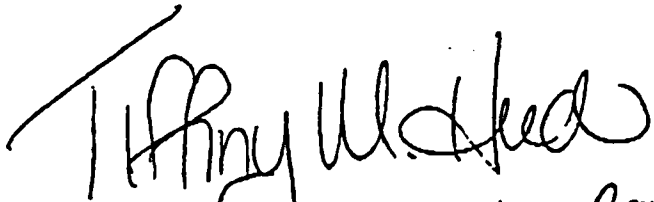
ORDER PROVIDING FOR PRELIMINARY INJUNCTIVE RELIEF - 7

Conformed Copies to:

Patrick D. Brown  
Hepworth, Lezamiz & Hohnhorst  
133 Shoshone Street North  
P. O. Box 389  
Twin Falls, ID 833303-0389

Roger D. Ling  
Boyd L. Baggett  
Ling, Nielsen & Robinson  
615 H. Street  
P. O. Box 396  
Rupert, ID 83350

(PDB\51125.510)llm

  
Deputy Clerk of the Court

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DISTRICT COURT  
SNAKE RIVER BASIN ADJUDICATION  
STATE OF IDAHO



DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
(208) 736-3011  
FAX (208) 736-2121

SRBA CHAMBERS  
P.O. BOX 2707  
TWIN FALLS, IDAHO 83303-2707

TO: Patrick D. Brown

Telephone:

Fax:

(208) 734-4115

FROM: SNAKE RIVER BASIN ADJUDICATION

Telephone: 208-736-3011

Fax: 208-736-2121

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Thanks, Tiffny

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