



State of Idaho

DEPARTMENT OF WATER RESOURCES

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February 3, 1997

RECEIVED

FEB 06 1997

Dave Sundberg
PO Box 1
Malta, ID 83342

Department of Water Resources

RE: Potential Questions on Clear Creek

Dear Mr. Sundberg:

Congratulations on your election as watermaster for delivery of waters to users on Upper Raft River and Clear Creek in Water District 43-B pursuant to the January 21st meetings of the waterusers.

As you know, at the meeting with Clear Creek waterusers, Mr. Jeff Sessions expressed his concern about whether it was appropriate for you to be considered for election as watermaster for the Idaho Clear Creek waterusers because of your involvement in litigation with some of the users and specifically because of the "Order Providing For Preliminary Injunctive Relief" signed by Judge Hurlbutt on May 15th, 1996. At the meeting I did not feel there was a prohibition for your consideration by the waterusers. As you know, you were elected and an advisory board was elected to assist you in smoothing out conflicts which may arise. I compliment you and the waterusers for taking an attitude to try to work past difficulties out. Since the meeting I have asked the department's legal counsel, Phil Rassier, to review the "Hurlbutt Order" to determine if your election may conflict with that order. It is Phil's opinion that it does not conflict.

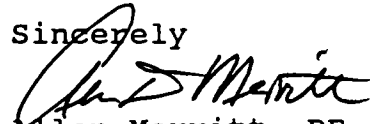
Further review of other elements of the "Hurlbutt Order" sparks concern by the department that delivery questions will develop over delivery of rights to Jones and Sessions through the shared delivery ditch from the Idaho Weir. Our understanding is that the "Hurlbutt Order" gives direction for the 1996 season only; further direction may be necessary by the department for the upcoming and future seasons.

Delivery of water by you should be based on the Albion-Idaho Land Company vs. Jobe Adams, et. al. decree. Although the amounts and priorities mentioned in the "Hurlbutt Order" are based on the decrees, the manner of delivery allowing shuffling of water between the upper and lower Jones' ranches is not supported by the decree. It appears that if shuffling of water back and forth between ranches is allowed there is potential of injury to Sessions. Specifically, injury may occur if Session's highwater right is curtailed either due to priority cuts or capacity limitations of

the ditch in delivering of Jones's shuffled water. (Actually SRBA claims filed by Jones do not claim that the water is shuffled back and forth). By copy of this letter I am informing the parties involved, their counsel, and your advisory board of this potential conflict. I encourage the parties to address this issue early on before the conflict ripens. Maybe agreements can be made between parties to resolve this potential problem.

I again compliment the waterusers' resolve expressed at the recent meeting to work things out. Please feel free to contact our office if you have questions.

Sincerely



Allen Merritt, PE
Southern Region Manager

CC: Jeff Sessions
Ray & Harold Jones
Roger Ling
Pat Brown
Jay Harper
Doug Freestone
Robert Hope
Boyd Hoskins