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June 4, 1998

FILED IN CASE NO. 92-00014

JUN 05 1998

Department of Water Resources
Southern Region

The Honorable Daniel C. Hurlbutt, Jr.
District Judge
Snake River Basin Adjudication
P. O. Box 2707
Twin Falls, ID 83303-2707

RE: Ex-parte communications with the Court
Case No. 92-00014

Dear Judge Hurlbutt:

It is not my normal practice to question whether or not ex-parte communications to the Court from only one attorney of a contested case occurs in an attempt to obtain an unfair advantage. The recent letter to you from Patrick D. Brown dated June 2, 1998 in reference to the above case goes beyond what I perceive to be the ethical practice regarding ex-parte communications. I object to Mr. Brown communicating to you allegations of activities that allegedly occurred after our hearing on interim administration, which is highly prejudicial to both the Idaho Department of Water Resources and to Mr. Sessions, my client. It appears to me that the only purpose of such communication is to cause the Court to be consciously, or at least subconsciously, prejudiced against my client. When there are concerns in regard to the duties of the watermaster, they should be properly raised with IDWR and appropriate relief sought through the administrative process. If I am mistaken, then I should be so advised so that complaints that my clients may have, from time to time, in regard to the watermaster may be communicated to the Court in ex-parte communications.

Very truly yours,

/S/ ROGER D. LING

Roger D. Ling

RDL:jkb

pc: Patrick D. Brown, Esq.
Doug Jones, IDWR
Jeff Sessions

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JUN 05 1998

Department of Water Resources
Southern Region

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Telephone (208) 436-4717
Attorneys for Defendant Jeff Sessions

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.)

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,)
Defendants.)

Case No. 92-00014

OBJECTION TO PROPOSED ORDER
ON INTERIM ADMINISTRATION

COMES NOW the defendant Jeff Sessions, by and through his
attorney of record, Roger D. Ling, and objects to the proposed

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3 *Order Modifying Interim Administration on Clear Creek* submitted by
4 counsel for the plaintiffs and received by objector's attorney on
5 June 3, 1998 in the following respects, to-wit:

6 1. Although this defendant objects to the use of Water
7 Right Nos. 43-00084, 43-00085 and 43-00286A on the Jones' Lower
8 Place, as the Lower Place is not the place of use shown in the
9 Decree for those water rights and no application for a change in
10 the place of use has been filed by plaintiffs, this defendant
11 specifically further objects to paragraph 1 on page 2 of the
12 proposed *Order* on the grounds and for the reasons that it infers
13 that such water rights may be used on both the Upper and Lower
14 Places making it impossible to prevent further expansion of the use
15 of said rights beyond the original acres decreed.

16 2. This defendant objects to paragraph 2 of the
17 proposed *Order* to the extent it fails to recognize that the right
18 of defendant Sessions is for 85 inches and the right of plaintiff
19 Jones is for 70 inches, and therefore on a 6-day period of
20 rotation, Sessions should be entitled to use the water for 79 hours
21 and Jones should be entitled to use the water for 65 hours. This
22 rotation is consistent with the rotation by percentage that Harold
23 Jones testified had always occurred since he has owned his Lower
24 Place.

25 3. Defendant Sessions objects to paragraph 3 of the
26 proposed *Order* on the grounds and for the reasons that the *Order*
27 attempts to place defendant Sessions in the same category as those

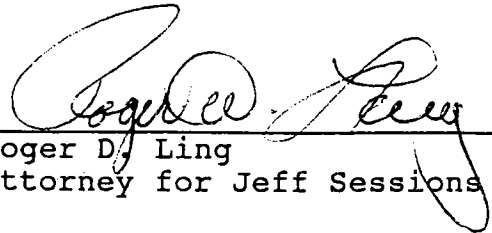
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3 persons with rights to use water of Clear Creek who have made no
4 claim for the use of this flood water right, notwithstanding the
5 fact that there have been no objections to the recommendation of
6 this right for Round Mountain Ranch except by plaintiffs Jones.

7 4. Defendant Sessions objects to paragraph 4 of the
8 proposed Order in that it is not clear that the measuring device to
9 be installed by the plaintiffs Jones should be installed on Jones'
10 ditch after the split of the East Ditch leading from the Idaho
11 weir, and on the grounds and for the reasons that after the East
12 Ditch is split between the Jones' ditch and Sessions' ditch, it is
13 no longer the East Ditch.

14 5. Defendant Sessions objects to paragraph 5 of the
15 proposed Order in that it, without full hearing, denies Sessions
16 the right recommended under Water Right No. 43-00286B, and attempts
17 to provide flood water rights to other Clear Creek water users even
18 though no such claims have been filed by such Clear Creek water
19 users, and there is no showing historically or otherwise that
20 excess water has been allocated on the basis of the percentage of
21 the total amount of the rights from Clear Creek held by each Clear
22 Creek water right user.

23 Respectfully submitted this 4th day of June, 1998.

24 LING, NIELSEN & ROBINSON

25
26 By 
27 Roger D. Ling
28 Attorney for Jeff Sessions

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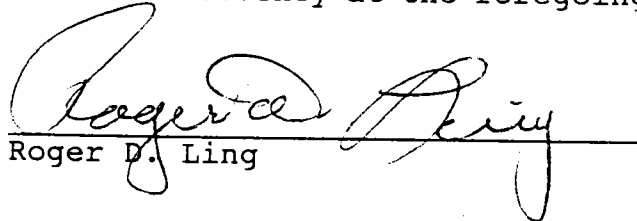
CERTIFICATE OF MAILING

I hereby certify that on the 4th day of June, 1998, I served copies of the foregoing **OBJECTION TO THE PROPOSED ORDER ON INTERIM ADMINISTRATION** upon:

Patrick D. Brown, Esq.
PARKER, WARR & BROWN, LLP
Attorneys at Law
812 Shoshone Street East
Twin Falls, ID 83301

Idaho Department of Water Resources
Southern Regional Office
1341 Fillmore, Suite 200
Twin Falls, ID 83301-3380

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said attorney at the foregoing address.


Roger D. Ling