



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 20, 1998

Dave Sundberg
Box 1
Malta, ID 83342

Re: Your Correspondence dated May 20, 1998

Dear Mr. Sundberg:

I have fully reviewed your letter dated May 20, 1998 which was received at my office on June 17, 1998. You also provided me a copy of this same letter at our June 18th meeting in Malta with the Utah Division of Water Rights (UDWR) representatives and the Utah water commissioner, Vern Kempton.

I believe that a number of the issues raised in your letter were either addressed or resolved at the June 18th meeting in Malta. Other issues raised by your letter appear to be within the jurisdiction of the UDWR and therefore should be addressed by them. Your letter and attachments will remain on file at IDWR.

Norm Young and I will prepare a summary of our notes from the June 18th meeting. This summary will be forwarded to Lee Sim at the UDWR to assist him in preparation of a letter providing some general direction to Vern Kempton about renewed cooperation with you acting as the Idaho watermaster.

Sincerely,

A handwritten signature in cursive script that reads 'Tim Luke'.

Tim Luke

cc: Allen Merritt, IDWR
Norm Young, IDWR

Dave Sundberg
Box #1, Malta, Idaho 83342

May 20, 1998

Tim Luke
Idaho Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

RECEIVED

JUN 17 1998

Department of Water Resources

Dear Mr. Luke,

I am sorry for being so slow, I started to write this on May 20, and now it is June 9. On about May, 19, we discussed some matters of concern on Clear Creek.

1. You suggested putting a staff gauge on Scoffield's property above my headgate. I pointed out that Scoffield has threatened to sue and/or kill me if I go on his property where my headgate is. I have enclosed a copy of the communication which I have had with Lee Sim concerning that matter. The occasion for this communication was that I was accused of taking water which "flows back" into the creek from Scoffield's fields. This is one of their efforts to establish that Clear Creek gains water and that there is more water at Ray Jones's headgate than there is at the guaging station, they gave much testimony in court to promote the same theory. It might be pointed out that no facts were ever produced that supported the accusation.

2. After the District 43-B water meeting on Jan. 20, 1998, the Utah water users had their meeting. It was voted by a majority (Campbell, Kempton and Sessions) that the measuring board presently being used will not be left in place except when there is about 20 cfs in the creek and that it would be removed immediately when the flow dropped below 17 cfs. After much arguement on the subject, two reasons were established. First, that the measuring board does not measure accurately when there is less than 17 cfs. Secondly, it was explained by Larry Kempton that they do not want Dave Sundberg measuring the water so they were going to take the board out.

3. I have no way to know how much water is in the creek or how much should be Idaho's share. If the creek rises or drops very much from one day to another, I can go to the Idaho Weir and adjust it according to how much is there at the time but then Vern changes it up above and whatever I did in Idaho is changed. I waited until after Vern turned the Utah water on May 27 and Sessions called in a complaint against me because I turned his water at 10:00 a.m. instead of 7:30. Vern agreed to meet me at 7:30 last year, but this year he says he can't make it and in fact has not showed up at

*I HAVE STAPLED AND LABELED DOCUMENTS
ACCORDING TO WHICH NUMBERED PARAGRAPH THEY
REFER TO. D.S.*

all this year.

4. Vern and Larry Kempton and Mont Campbell have all said that there should be more than 20 cfs when the creek goes to Idaho. Larry said in the water meeting in 1995 that there should be 35 cfs, on May 28, 1995 Vern and Mont tried to convince us that there should be 30 cfs before it goes to Idaho. This year the creek ran 347 acre feet to Idaho before it got up to 30 cfs besides the 22 cfs which ran on May first. So if we had followed Vern's policy, they would have taken over 400 acre feet of Idaho water this Spring. It might be pointed out that Vern did not turn any water to me before it went to Idaho even though I should start taking water when there is 13 cfs and I did tell him to put it in the ditch by Scoffield's house. If you look at the affidavit which I attached to the letter to Mr. Sim, you will see that I had this same complaint in 1995.

They are using this water to irrigate the ground listed in the Applications to appropriate water which I have enclosed a copy of. Campbell, Kempton and Sessions, the same ones who are applying for giant new water rights, are the ones who don't want a measuring device in the creek. I should explain that Application number A70222 from Rice and Jim Creeks is using "Larry's meadow" as it's water source as shown in the partial transcript of the hearing. Larry's meadow is on the West side of the County road and derives it's water entirely from Clear Creek with no possibility of water reaching it from Rice or Jim Creek. Gary Rose was representing Rice and Jim Canyon Irrigation Company and since the hearing has sold his Rice Creek place to the Sessions-Scoffield group. So actually this water right filing was another effort by Sessions etc. to get a Clear Creek-alias Rice Creek water right and transport water from Clear Creek to Rice Creek drainage through Kempton's and on down to Round Mountain.

5. On May 23, 1996, after a meeting at the Naf store, you, Frank Hitchcock Reid Stewart and I went down and looked at Stewart's diversion where Holmgren had put a dam across the creek and Stewart had a tractor stuck trying to remove the dam. Up to that date Stewart and Arimo had not received any water but Vern's record shows that they both received water every day before that and they were billed for that water. In Mr. Sim's second letter he says, in the third paragraph, "One of the purposes of the commissioner is to ensure that an annual report is prepared which documents the distribution of water." As my letter to Sim indicates no such report was produced for 1996 and so far no report or records have been produced by Vern for 1997

even though Mr. Sim promised that he would send us a copy in the 1998 annual meeting and we have made several requests, both written and over the telephone. Mr. Sim and Mr. Fotheringham keep giving us fony excuses why Vern has not sent them in yet but they never produce anything. Item number 3 of the 1998 water meeting schedule was supposed to be the report of the commissioner, however the "commissioner" was not at the meeting and no report was given and Sim and Fotheringham have been covering him ever since then. On Jan. 6, 1997 My brother and I were discussing these applications to appropriate water with Bob Fotheringham in his office and he told us that it is none of our business if Kempton and Campbell take water from the Idaho users. We tried to argue with him and he got quite adamant that we don't have any business trying to interfere and that it helps the Utah users if they take it. Since they are also taking my water I consider that it is my business.


6. In his May 5, 1998 letter the State Engineer threatened to "jeopardize the cooperative working relationship between Utah and Idaho on Clear Creek." I don't believe that there is any potential loss of cooperation since the only relationship that exists to my knowledge is that of Kempton, Campbell, Sessions-Scofield and Sim and Fotheringham trying to deceive the other water users on Clear Creek. Vern was blatantly taking my water and Idaho water on May 2 when I turned it down the creek to Idaho.

7. Paragraph 4 of the Order Providing For Preliminary Injunctive Relief signed by Judge Hurlbutt in May 1996 says that Vern is to allow me to observe etc. how Vern distributed water. He has refused to do so. Whenever Vern and his friends are taking water illegally to places where they know they will be seen they always harrass me, for example Scofield's lawyer's letter, although Judge Hurlbutt's order in paragraph 8 says Kempton should give Naydine's horses back, they stole the horses back later and started calling Naydine demanding 1050 dollars or they were going to have the sherrif sell the horses, she wouldn't give them money so they stole a tractor and started threatening her about that. All of this was happening at a time when they were running a big stream across the road into Rice Creek drainage and splitting it between Kempton, Campbell and Sessions. In a hearing in Box Elder District Court Scofield testified that he was harrassing me because I was interfering with the ditch they use to take water to Rice Creek by not letting Mont go through my yard. The judge ruled that Mont doesn't have a right to go through my yard. As the letter from the Sherrif shows Kempton's were calling the Sherrif.

8. As the minutes of the advisory committee show, they are trying to get court orders from the Utah courts to prevent me from measuring the water. Campbell, Kempton and Scaffield have all boasted to me that they are going to sue me and harrass me until they get rid of me or kill me if they have to. On May 2, when I turned the water to Idaho, Mont attacked me when I went and tried to talk to Vern and I was not able to even talk to him and Vera has never said a word to me about it. Whenever they get caught they call the authorities and make as much noise as they can trying to get the attention on me while they do their illegal activities. In the meeting on June 18, whatever agreement we come to as far as measureing the water with Vern should include arrangements for my safety because these people are becoming more violent as we go along. Because of the secluded nature of the measuring places, meeting alone with Vern and his friends could be dangerous.

9. Since Vern and the Utah people still haven't produced any records, I wonder if you could convince them to bring records for last year and this year to the meeting? It would be nice if we could find some solution besides just me chasing Vern around in circles while he and the Utah people play hard to get.

sincerely,


DAVID Q. SUNDBERG



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

July 23, 1996

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
Robert L. Morgan
State Engineer

1594 West North Temple, Suite 220
Box 146300
Salt Lake City, Utah 84114-6300
801-538-7240
801-538-7467 (Fax)

Dave Sundberg
HC 72
Malta, ID 83342

Dear Mr. Sundberg,

It has come to our attention that Clear Creek is now on turns in Utah. I understand that the turn schedule was set up by Vern Kempton, the water commissioner, according to the provisions of the Christensen Decree. The historical practice during the period of turns has been that, except when it was his turn, each water user would take his dam out of the stream and allow any leakage or return flows to flow unhindered down the creek for watering livestock.

It is reported to us that you have constructed a dry dam in the creek and are diverting water outside of your watering turn. According to the decree cited above, this is an illegal diversion of water. By this letter, I am instructing you to remove or open your dam so that the flow of Clear Creek bypasses your diversion except during your turn as scheduled by the commissioner.

I would also remind you that under Utah law, only those water rights that list your point of diversion may be diverted at your diversion dam. If you desire to divert another water user's rights at your diversion, a change of point of diversion and a change of place of use must be submitted and approved by the State Engineer. Where this arrangement will not be permanent, a temporary change application for these purposes may be filed each year. If the change involves shares in an irrigation company, the company must be the party that signs and submits the change to the Division of Water Rights.

If you have any questions concerning these issues, please contact Bob Fotheringham, Regional Engineer, at 752-8755 or me at 538-7380.

Sincerely,

Lee H. Sim, P.E.
Assistant State Engineer
for Distribution and Adjudication

cc: Bob Fotheringham
Vern Kempton



OCT. 10 1996

LEE H. SIM

DEAR MR. SIM,

CONCERNING YOUR LETTER TO ME ON JULY 23, 1996, IN PARAGRAPH 2, BY WHICH WAS IT REPORTED THAT I DIVERTED WATER OUT OF TURN AND HOW MUCH WATER DID I ILLEGALLY DIVERT?

WHICH PARAGRAPH IN THE CHRISTENSEN DECREE TELLS ABOUT THE RETURN FLOWS WHICH ARE EXPECTED TO FLOW UNHINDERED? HOW MUCH WATER NORMALLY FLOWS BACK INTO CLEAR CREEK? HOW FAR DOES IT FLOW UNHINDERED DOWN THE CREEK FOR WATERING LIVINGSTON? PLEASE DESCRIBE THE DRY DAM AND EXPLAIN HOW IT PREVENTS WATER FROM BYPASSING MY DIVERSION. WHAT IMPAIRED YOU TO WRITE THE THIRD PARAGRAPH OF THIS LETTER?

I WAS IN LOGAN ABOUT THE MIDDLE OF SEPTEMBER AND LEFT A NOTE TO BOB FOTHERINGHAM REQUESTING A COPY OF WHATEVER DOCUMENTS HAVE BEEN GENERATED ABOUT CLEAR CREEK DURING 1996. THE MAN I TALKED TO EXPRESSED HIS OPINION THAT THERE ARE NO DOCUMENTS. MR. FOTHERINGHAM'S LACK OF RESPONSE SUPPORTS HIS OPINION. HOWEVER, THIS LETTER YOU SENT ME INDICATES THAT HE HAS A COPY.

I AM AWARE THAT BOTH YOU AND MR. FOTHERINGHAM WERE AT A MEETING IN THE NAF STORE AND ALSO YOU WERE BOTH AT A MEETING IN MALTA, YET IN LOGAN I WAS TOLD THAT NO RECORDS OF EITHER MEETING EXIST. IS THAT POSSIBLE? YET YOU HAVE TIME AND VIGOR FOR WRITING PUBLIC DOCUMENTS LIKE THIS LETTER ACCUSING ME OF TAKING WATER ILLEGALLY.

LEE H.

I HAVE ATTACHED A COPY OF AN AFFIDAVIT WHICH I SUBMITTED TO THE COURT IN TWIN FALLS LAST APRIL SO YOU CAN HAVE AN IDEA WHAT SOME OF MY COMPLAINTS WERE AGAINST VERN HEMPTON. IT MIGHT BE POINTED OUT THAT FOR VERN TO TURN PRACTICALLY ALL OF THE UPPER DIVISION WATER TO MONT CAMPBELL AND LARRY HEMPTON IN THE MONTH OF JULY 1995 IS CONTRARY TO THE CHRISTENSEN DECREE THAT YOU ARE SO FAMILIAR WITH. ESPECIALLY CONSIDERING THE FACT THAT MOST OF THAT WATER WENT TO GROUND WHICH HAS NO WATER RIGHTS APPURTENANT TO IT. THIS YEAR THEY DID ABOUT THE SAME THING, ALLOWING MY CROPS TO GO WITHOUT WATER WHILE THEY RUN BIG STREAMS ONTO THEIR NEW GROUND.

I AM SURE THAT YOU ARE AWARE THAT THEY ARE NOW FILING APPLICATIONS TO APPROPRIATE THE WATER WHICH THEY HAVE BEEN TAKING FROM US FOR THE LAST THREE YEARS. I AM SURE THAT YOU ARE AWARE THAT CLEAR CREEK HAS HISTORICALLY INDICATED ABOUT 830 ACRES IN THE UPPER DIVISION. I AM SURE THAT YOU ARE AWARE THAT CAMPBELL'S APPLICATIONS TO INDICATE 900 ACRES AND HEMPTON'S APPLICATIONS TO INDICATE 1200 ACRES ARE ABSOLUTELY ABDICULOUS.

I AM QUITE DISAPPOINTED IN YOU FOR ENCOURAGING THEM TO TAKE OUR WATER WHEN THERE IS WATER AND ACCUSING ME OF ILLEGALLY TAKING WATER WHEN THERE IS NO WATER.

HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389
Telephone: (208)734-7510
Attorneys for Plaintiffs
(PDB\51125DS.AFF)\lm

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

AFFIDAVIT OF DAVE SUNDBERG

* * * * *

STATE OF IDAHO)
) ss.
County of Twin Falls)

Dave Sundberg, being first duly sworn upon oath, deposes and says:

1. My name is Dave Sundberg and I reside in Box Elder County, Utah. I make the following statements based on my personal knowledge, and I am otherwise competent to make the statements set out below.

2. Attached as exhibit "A" are aerial photographs of the upper part of Clear Creek. Some of the important names and places are written on the photos so the court knows the names we use up in the Naf area and what the water users are referring to.

3. My father, Guy Sundberg, was watermaster on Clear Creek from about 1960 to 1993, when he died. In 1988 he wrote the document attached as exhibit "B" so the water users on Clear Creek would know how he turned the water. At that time he was trying to find somebody else to take the job as watermaster.

4. In 1995, Larry Kempton, Laverne Kempton, and Monte Campbell told me that they were not going to turn the water to the Idaho users when there was 20 cfs in the spring of the year as specified in the Johnson Decree. (Albion Land Co v. Naf Irrigation Co. et al.)

5. I own Utah water right claim Nos. 788 and 789 in the Upper (Utah) Division which were owned by Guy Sundberg in 1988 when he wrote exhibit "B." This right should receive water when there is more than about 13 cfs flowing in the creek. Laverne did not turn me any water until after there was 20 cfs, at which time the water should have been in Idaho. Larry, Laverne and Monte say the water should not go to Idaho until there is 30 to 35 cfs, contrary to the Johnson Decree.

6. In 1994, Ray Jones asked Idaho Department of Water Resources for some kind of measuring device to replace the old U.S.G.S. gaging station. In March 1995, Laverne and I made a portable measuring board which could be put into a headgate just below the Gaging Station and taken back out when the water got high. Last fall Monte and Laverne took it out to prevent us from measuring the stream, and this spring they refuse to put it back in because they do not want anybody measuring the creek.

7. In May of 1995 when the water went to Idaho, even though there was 70 cfs in the creek, Laverne refused to turn more than 1.4 cfs to Ray Jones. With 70 cfs going to Idaho, Ray should receive 9.7 cfs.

8. In July 1995, Laverne did not turn any Naf Irrigation Co. water to Ray. During this time he turned exorbitant amounts of water to Larry and Monte, the majority of which went to ground which has no water rights.

9. Monte, Laverne and Larry have told me that Ray can not share water with other people or between his two farms and that he cannot combine his streams. This is contrary to customs and decrees. All three have said that they intend to interfere and prevent Ray from irrigating his crops.

10. Laverne does not follow the way Guy Sundberg distributed water on Clear Creek from the fifties until he died, or the existing decrees. Laverne has stated that he is trying to dispossess some of the other people on Clear Creek of water and use the water to develop new ground and new water rights. Monte and Larry are participating in this dispossession and also in dispossessing Harold Jones of his water and water right No. A43-00286, which Laverne has crossed off of his list of Idaho water rights. They also say they will refuse the Jones access to Naf Irrigation Co. water.

11. In 1996, Monte and Larry have told me they are going to interfere and not let Ray irrigate his Lower Place again.

12. Much of the early and late water, May - July - August of 1995, which Laverne's books show he delivered was not delivered. Ray and I made measurements of the water which was delivered to Ray and to the Idaho Weir. Laverne's records are not accurate, particularly concerning July - August of 1995.

Dated this ___ day of April, 1996.

Dave Sundberg

SUBSCRIBED and SWORN to before me this ___ day of April, 1996.

NOTARY PUBLIC FOR IDAHO

Residing at: _____

My Commission Expires: _____

THIS SPRING VERN HEARTON AND STEVEN SCOFFIELD
CAME AND TOLD ME THAT I HAVE NO RIGHT TO LOOK
AT MY HEADGATES OR MAINTAIN MY DITCHES, BOTH
OF WHICH CROSS SCOFFIELD'S AND MONT CAMPBELL'S
PROPERTY. THEY HAD PUT CEMENT IN MY DITCH
AND OPENED THE SIDE SO THE WATER WOULD RUN
BACK INTO THE CREEK AND NO WATER COULD RUN
DOWN THE DITCH TO MY PROPERTY.

IN MAY, PATRICK BROWN ADVISED ME TO REPAIR
THE DITCH. I PATCHED THE SIDE OF THE DITCH AND
RECEIVED A LETTER FROM SCOFFIELD'S ATTORNEY, A
COPY OF WHICH IS ATTACHED. ON JULY 3, MY
SISTER AND I WENT DOWN THE COUNTY ROAD TO
WHERE IT CROSSES MY DITCH BY SCOFFIELD'S YARD
AND THE NEXT DAY SCOFFIELD CAME TO ME, ON MY
PROPERTY, AND TOLD ME HE WOULD PUT A BIG HOLE
IN ME IF I EVEN WENT DOWN THERE AGAIN. HE
WAS CARRYING A GUN.

ON SEPTEMBER 23, 1996, RAY JONES AND I WITH
SOME PEOPLE FROM THE SCS OFFICE WENT TO LOOK AT
MY HEADGATES AND DITCHES. JEFF SESSIONS AND MONT
CAMPBELL WERE AT SCOFFIELD'S PLACE AND REFUSED TO
ALLOW US ON THEIR PROPERTY. I WOULD APPRECIATE IT
IF YOU WOULD EXPLAIN PARAGRAPHS 7 AND 10 OF THE
CHRISTENSEN DECREE TO SCOFFIELD, HEARTON AND CAMPBELL.
I HAVE ATTACHED A COPY OF THE DECREE.

LAW OFFICES OF
SMITH, KNOWLES & HAMILTON

A PROFESSIONAL CORPORATION
4723 HARRISON BOULEVARD, SUITE 200
OGDEN, UTAH 84403
PHONE (801) 476-0303
FAX (801) 476-0399

E-H 11/17 F

MELVEN E. SMITH
DAVID L. KNOWLES*
DAVID R. HAMILTON
ROBERT KARIYA
STANFORD A. GRAHAM
GARY R. WILLIAMS

*ALSO MEMBER CALIFORNIA BAR
AND WYOMING BAR

OF COUNSEL:
FREDRICK "BUCK" FROERER III

June 11, 1996

Dave Sunberg
H.B. 72
Malta, Idaho 83342

RE: *Steve Scoffield*

Dear Mr. Sunberg:

I have been retained by Steve Scoffield to represent him regarding your trespassing over Steve Scoffield's property and your interference with Steve Scoffield's fences.

Steve has informed me that you contend to have a right to travel on Steve's property in order to check a headgate which apparently is part of a watering system you utilize. Steve Scoffield disagrees with your position, although he does acknowledge that the water master may have some rights to check the headgate. You, however, do not have such a right.

Steve Scoffield has also informed me that you have been building fences around property which you do not own and that you may attempt to remove fencing materials installed by Steve Scoffield.

Demand is hereby made that you immediately cease entering onto Steve Scoffield's property for any reason whatsoever and that you refrain from removing fencing materials owned by Steve Scoffield. If you fail to abide by the aforementioned demands, I have been instructed to immediately file suit against you to obtain a permanent injunction, prohibiting you, by law, from entering Steve Scoffield's property and from removing fencing materials, and for damages incurred.

Sincerely,

SMITH, KNOWLES & HAMILTON, P.C.



Melven E. Smith

cc: Steve Scoffield

WHEREFORE, it is ORDERED, ADJUDGED AND DECREED, as follows:

1. That the parties hereto, both plaintiff and defendants, are entitled to the use of all of the waters of Clear Creek and its tributaries at such times between the 1st day of July and the 1st day of December, both inclusive, when the flow thereof does not exceed six cubic feet per second, measured at the point of diversion of the Naf Ditch at the North boundary line of Section thirty-six (36), Township Fifteen (15) North of Range Thirteen (13) West of the Salt Lake Meridian, in Utah, in the following proportions, to-wit: Levi T. Campbell is entitled to one-three hundred forty-sixth ($1/346$) part of the flow of said stream during said mentioned times; the defendant Irvin Campbell is entitled to five-three hundred forty-sixth ($5/346$) part thereof; the defendants D. R. Kempton, Lorin Kempton and Philip Ospital, are entitled to thirty-three hundred forty-sixth ($30/346$) part thereof; the defendant A. E. Hartsough is entitled to four-three hundred forty-sixth ($4/346$) part thereof, the defendant Sophia J. Ryan, is entitled to six-three hundred forty-sixth ($6/346$) part thereof, and the plaintiff, Naf Irrigation Company is entitled to three hundred-three hundred forty-sixth ($300/346$) part thereof.

2. The said plaintiff, Naf Irrigation Company is entitled to divert one-fourth ($1/4$) of the proportional part of the stream awarded to it through its ditches leading to the lands of its stockholders in Idaho, described as being all of the Southeast Quarter of Section twenty-seven (27), Township sixteen (16) South of Range Twenty-seven (27) East of the Boise Meridian, Cassia County, State of Idaho.

3. That in addition to the rights hereinbefore specified, the defendants, D. R. Kempton, Lorin Kempton, and Philip Ospital are entitled to divert from Clear Creek and conduct through a ditch running to and by their dwelling house situate near the banks of said stream in Section 11, Township Fourteen (14) North of Range Thirteen (13) West of the Salt Lake Meridian, Box Elder County, Utah, a small stream of water, which is to be discharged back into the natural channel of said Clear Creek, and to take therefrom sufficient waters for their uses for strictly culinary purposes.

4. That during all times other than the period of time hereinbefore specified the parties hereto are entitled to the use of the waters of said Clear Creek, and its tributaries, in the quantities and with the priorities following, to-wit:

The defendants, D. R. Kempton, Lorin Kempton and Philip Ospital, one-half ($1/2$) cubic foot per second, with a priority dating from 1874; one-third ($1/3$) cubic foot per second diverted from Italian Creek, with a priority dating from 1890; one-sixth ($1/6$) cubic foot per second, with a priority dating from the year 1908.

The Plaintiff, Naf Irrigation Company, one-third ($1/3$) cubic feet per second, with a priority dating from the year 1881; 1.66 cubic feet per second, with a priority dating from the year 1883; two-thirds ($2/3$) cubic foot per second, with a priority dating from the year 1884; 2.66 cubic feet per second, with a priority dating from the year 1885; 2.66 cubic feet per second, with a priority dating from the year 1893; 3.68 cubic feet per second, with a priority dating from the year 1900;

The Defendant, Irvin Campbell $35/60$ of a cubic foot per second, with a priority dating from the year 1893;

The defendant, Levi T. Campbell $23/60$ of a cubic foot per second, with a priority dating from the year 1902.

The defendant, A.E. Hartsough, $4/60$ cubic foot per second, with a priority dating from the year 1885; a $4/60$ of a cubic foot per second, with a priority dating from the year 1901.

The defendant, Sophia J. Ryan, $1/10$ of a cubic foot per second, with a priority dating from the year 1885; a 2.9 cubic foot per second, with a priority dating from the year 1901.

5. That the waters, and the right to the use of the waters herein decreed and awarded to the defendants, D. R. Kempton, Lorin Kempton and Philip Ospital, shall be used upon and become appurtenant to the lands of the said named parties lying and being in Sections One (1), Two (2) Eleven (11), and Twelve (12), Township Fourteen (14) North of Range Fourteen (14) West of the Salt Lake Meridian, in Box Elder County, Utah.

6. The title of each of the said parties in and to the waters and use of the waters of the said Clear Creek, and its tributaries is hereby quieted in the proportions and quantities and according to the dates of priority in this decree specified, except that as to one-fourth ($1/4$) of the proportionate share of the waters of the said stream which was awarded to the plaintiff, Naf Irrigation Company during the period of time when it takes a specified proportionate amount of the entire stream, and as to 2.66 cubic feet per second thereof during the time when a specified number of cubic feet per second of water is awarded to the said Naf Irrigation Company, the title of the said plaintiff is not quieted, but the defendants, and each of them is hereby enjoined and restrained, and they and their employees, servants, agents and successors in interest are enjoined and restrained from in any manner or wise setting up any claim to the said waters, and from in any manner or wise preventing the flow of the same to and from the ditches and diverting works of the said plaintiff and its stockholders, to and upon the lands of its stockholders situated in Idaho, and hereinbefore in this decree described.

7. Each of the parties hereto is required to construct and maintain, at his or its point or points of diversion, at his or its own proper cost and expense, a good and sufficient measuring weir and headgates to enable one charged with the distribution of the waters hereby awarded among the said parties, to measure and to distribute to each the amounts and quantities and proportions of water awarded to him or it respectively, by the terms and provisions of this decree.

8. That a commissioner shall be appointed by the Court annually on the request of either of the parties hereto, without notice to any other part, to distribute and apportion the waters of Clear Creek among the parties hereto in accordance with their rights as defined by this decree, said commissioner to qualify by taking oath of office, and by filing a good and sufficient bond in such a sum as the Court making the appointment may direct, and the costs and expenses of such commissioners shall be borne and paid by the parties hereto in proportion to their respective interest in the waters so distributed.

It is further Ordered, Adjudged and Decreed that each of the parties to this action shall pay his or her, or its own witnesses and that the plaintiff herein recover from the defendants its court costs herein expended, excepting its witness fees, which said costs are hereby assessed in the sum of \$15.20; the defendants, D. R. Kempton, Lorin Kempton, and Philip Ospital to pay one-fifth (1/5); the defendant Irvin Campbell to pay one-fifth (1/5); the defendant Levi T. Campbell to pay one-fifth (1/5), the defendant A. E. Hartsough to pay one-fifth, and the defendant, Sophia J. Ryan to pay one fifth (1/5).

10. And it is further ordered, adjudged and decreed, that each and every of the parties to this action, the plaintiff and the defendants, and each and every of their servants and employees, and their successors in interest be, and they and each of them are perpetually enjoined and restrained from in any manner interfering with the waters of the said Clear Creek, and its tributaries, except as their rights herein decreed may appear; and each of said parties, his, her, or its agents, counsellors, employees and successors in interest are hereby perpetually enjoined and restrained from in any manner interfering with the rights of any other party or parties to this action as said rights herein appear in the use of said waters, or in the use of any dam, gate, conduit, canal, or other works used in the diversion of any of said waters, except as their rights are herein defined and decreed with respect to the quantity of water herein allotted to each of said parties respectively, and with respect to the date of their respective appropriations in so far as priority of rights is by this Decree fixed: it being the intention of this

decree that the rights of said parties to the use of said waters shall be governed by and according to the proportionate amounts awarded to each of the parties during the season of the year when the whole of the stream is divided among the said parties in fixed proportions, and shall be governed during the remaining periods of time according to the dates of the respective priorities of the parties hereto.

Done at Chambers this 18th day of November, 1918.

George Christensen
Presiding Judge.

Filed Nov. 27, 1918, John G. Wheatley, Clerk. By Louise Ingram, Deputy.

IN THE MEETING AT THE NAF STONE IN MAY I WAS UNDER THE IMPRESSION THAT IT WAS AGREED THAT WE SHOULD PUT A MEASURING DEVICE BACK IN AT THE USGS GUARDING STATION. IN THE MEETING IN MALTA ON JUNE 13, MONT CAMPBELL, HEMPTONS AND YOU WERE OF THE OPINION THAT WE SHOULD NOT. I CAN UNDERSTAND CAMPBELL AND HEMPTONS WANTING TO PROMOTE ALL THE IGNORANCE THEY CAN WHILE THEY DEVELOPE THEIR NEW WATER RIGHTS, BUT I DONT UNDERSTAND YOUR REASON. WOULD YOU PLEASE EXPLAIN IT?

THE AUTOMATIC MEASURING DEVICE WAS ORDERED BY THE COURT IN THE CASE OF ALBION LAND CO VS NAF IRRIGATION CO. ET AL, AND SERVES THE VERY USEFUL PURPOSE OF PREVENTING A DISHONEST WATERMASTER FROM DEPRIVING THE CLEAN CREEK WATER USERS.

I AM HEREBY FORMALLY REQUESTING THAT YOU MAKE WAATEVER EFFORT YOU CAN TO ASSURE THAT THE AUTOMATIC MEASURING DEVICE IS REPLACED.

SINCERELY,



DAVID Q. SUNDBERG



State of Utah
 DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF WATER RIGHTS

November 5, 1996

Michael O. Leavitt
 Governor
 Ted Stewart
 Executive Director
 Robert L. Morgan
 State Engineer

1594 West North Temple, Suite 220
 Box 146300
 Salt Lake City, Utah 84114-6300
 801-538-7240
 801-538-7467 (Fax)

*TYPICAL OF MR. SIM HE GIVES NO
 ANSWERS TO THE QUESTIONS I ASKED EXCEPT THAT
 HEACTIONS WILL DO HIS THINKING FOR HIM*

Mr. Dave Sundberg
 HC 72, Box 1
 Malta, Id 83342

Dear Mr. Sundberg:

Re: Distribution of Clear Creek

Thank you for your letter of October 10. It is clear there are differing opinions about how the flows of Clear Creek should be distributed. The State Engineer has organized a distribution system and appointed a commissioner to, hopefully, resolve these issues.

It is our goal to insure that the waters of Clear Creek are distributed according to the court decrees which have been issued. Generally, we have found that historic practices in distributing water have a valid basis in the decrees or water rights. We are always hesitant to change historic practice without adequate evidence that it should be changed. We have found this to be true so far on the Clear Creek, therefore, until adequate evidence is presented showing historic practices are not correct, we will instruct the commissioner to continue the practices now being followed.

A commissioner will be appointed for next year. You will be receiving a billing from this office for the commissioner's efforts of this past year. The bills for the commissioner's work will come from this office each year from now on. One of the purposes of the commissioner is to ensure that an annual report is prepared which documents the distribution of water. It is our belief that the annual report will help us to evaluate the distribution practices to ensure they are in accordance with the decrees.

I apologize that Mr. Fotheringham did not respond to your request for information. I believe he was somewhat uncertain about what you were requesting. However, no official minutes were kept of the meetings at the NAF store and in Malta, so there was nothing of that sort to send to you.

Concerning the recording device at the USGS gaging station site, it is our understanding the recording device would be used mostly to determine when water should be turned to Idaho and then returned to Utah. The recording device appears to be necessary only if there is a disagreement between the two states



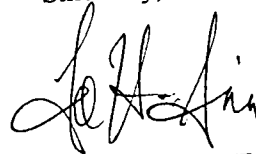
November 5, 1996

Sundberg Letter continued-
Page 2

concerning those decisions. At our last meeting, it appeared there was general agreement that the decision could be made and accepted by the water users of both states without the recording device. Therefore, we do not see the need to order that such a device be installed at this time, but we will continue to monitor the situation.

If you have any questions concerning these issues, please contact Bob Fotheringham, Regional Engineer at (801) 752-8755 or myself at (8001) 538-7380.

Sincerely,



Lee H. Sim, P.E.
Assistant State Engineer
for Distribution

LHS:bd

cc: Bob Fotheringham

FILING FOR WATER IN THE STATE OF UTAH

Rec. by R
 Fee Rec.
 Receipt #
 Microfilmed
 Roll #

APPLICATION TO APPROPRIATE WATER

For the purpose of acquiring the right to use a portion of the unappropriated water of the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements to Title 73, Chapter 3 of the Utah Code Annotated (1953, as amended).

WATER RIGHT NUMBER: 11 - 1148

APPLICATION NUMBER: A70160

1. OWNERSHIP INFORMATION:

LAND OWNED? Yes

A. NAME: Mont Campbell
 ADDRESS: Naf Route, Malta, UT 83342

B. PRIORITY DATE: June 28, 1996

FILING DATE: June 28, 1996

2. SOURCE INFORMATION:

A. QUANTITY OF WATER: 160.0 acre-feet

B. SOURCE: Surface runoff/spring

COUNTY: Box Elder

C. POINT OF DIVERSION -- SURFACE:

(1) N 1420 feet E 2220 feet from SW corner, Section 1, T 14N, R 13W, SLBM
 DIVERT WORKS: Headgates & ditches
 SOURCE: Surface runoff/spring

D. COMMON DESCRIPTION: Clear Creek

3. WATER USE INFORMATION:

IRRIGATION: from Mar 1 to Oct 31. IRRIGATING: 40.0000 acres.

BS TOWN RANG SEC

SL	14N	13W	1	NW	NW: 0.0000	NE: 0.0000	SW: 0.0000	SE: 0.0000	NEM	NW: 0.0000	NE: 0.0000	SW: 0.0000	SE: 0.0000	Section Total		
					SW	NW: 0.0000	NE:	X	SW: 0.0000	SE: 0.0000	SEM	NW: 0.0000	NE: 0.0000	SW: 0.0000	SE: 0.0000	0.0000
Group Total:														0.0000		

STOCKWATERING: from Jan 1 to Dec 31. EQUIVALENT LIVESTOCK UNITS: 200.

4. EXPLANATORY:

This is a wastewater filing. The purpose is to irrigate 40 acres with water that flows from the Clear Valley Ranch. Water also rises in a spring at the point of diversion.

FILING FOR WATER IN THE STATE OF UTAH

Rec. by YR
Fee Rec. _____
Receipt # _____
Microfilmed _____
Roll # _____

APPLICATION TO APPROPRIATE WATER

For the purpose of acquiring the right to use a portion of the unappropriated water of the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements to Title 73, Chapter 3 of the Utah Code Annotated (1953, as amended).

WATER RIGHT NUMBER: 11 - 1147

APPLICATION NUMBER: A70159

1. OWNERSHIP INFORMATION:

LAND OWNED? Yes

A. NAME: Mont Campbell
ADDRESS: Naf Route, Malta, ID 83342

B. PRIORITY DATE: June 28, 1996

FILING DATE: June 28, 1996

2. SOURCE INFORMATION:

A. QUANTITY OF WATER: 20.0 cfs

B. SOURCE: Clear Creek

COUNTY: Box Elder

C. POINTS OF DIVERSION -- SURFACE:

- (1) S 1010 feet E 1020 feet from W $\frac{1}{4}$ corner, Section 1, T 14N, R 13W, SLBM
DIVERT WORKS: Headgates & ditches
SOURCE: Clear Creek
- (2) N 325 feet E 1590 feet from W $\frac{1}{4}$ corner, Section 1, T 14N, R 13W, SLBM
DIVERT WORKS: Headgates & ditches
SOURCE: Clear Creek
- (3) S 920 feet E 2080 feet from NW corner, Section 1, T 14N, R 13W, SLBM
DIVERT WORKS: Headgates & ditches
SOURCE: Clear Creek
- (4) S 90 feet E 2430 feet from NW corner, Section 1, T 14N, R 13W, SLBM
DIVERT WORKS: Headgates & ditches
SOURCE: Clear Creek

D. COMMON DESCRIPTION: Clear Creek

3. WATER USE INFORMATION:

Water Rights Appurtenant: 11 - 1147, 795, 812, 805, 803, 804

IRRIGATION: from Mar 1 to Oct 31. IRRIGATING: 904.0000 acres.

Continued on next page.

FILING FOR WATER IN THE STATE OF UTAH

Rec. by R

Fee Rec.

Receipt #

Microfilmed

Roll #

APPLICATION TO APPROPRIATE WATER

For the purpose of acquiring the right to use a portion of the unappropriated water of the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements to Title 73, Chapter 3 of the Utah Code Annotated (1953, as amended).

WATER RIGHT NUMBER: 11 - 1152

APPLICATION NUMBER: A70221

1. OWNERSHIP INFORMATION:

LAND OWNED? Yes

A. NAME: Larry Kempton
ADDRESS: HC 72, Malta, ID 83342

B. PRIORITY DATE: July 8, 1996

FILING DATE: July 8, 1996

2. SOURCE INFORMATION:

A. QUANTITY OF WATER: 60.0 acre-feet

B. SOURCE: Overflow

COUNTY: Box Elder

C. POINT OF DIVERSION -- SURFACE:

(1) S 1600 feet W 2300 feet from NE corner, Section 31, T 15N, R 12W, SLBM

D. COMMON DESCRIPTION: Clear Creek

3. STORAGE. Water is diverted for storage into:

(1) Unnamed reservoir, from Jan 1 to Dec 31.

CAPACITY: 60.000 acre-feet. INUNDATING: 15.00 acres.

Area inundated includes all or part of the following legal subdivisions:

BASE TOWN RANG SEC	NORTH-WEST¼				NORTH-EAST¼				SOUTH-WEST¼				SOUTH-EAST¼			
	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE
SL 15N 12W 31				***			X	***				***				

4. WATER USE INFORMATION:

IRRIGATION: from Mar 1 to Oct 31. IRRIGATING: 120.0000 acres.

BS TOWN RANG SEC

BS TOWN RANG SEC	NW¼	NE	SW	SE	NW¼	NE	SW	SE	Section Total
SL 15N 12W 31	X				X				0.0000
	SW¼	NE	SW	SE	SW¼	NE	SW	SE	0.0000
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
32	X				X				0.0000
	SW¼	NE	SW	SE	SW¼	NE	SW	SE	0.0000
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Group Total:									0.0000

STOCKWATERING: from Jan 1 to Dec 31. EQUIVALENT LIVESTOCK UNITS: 500.

FILING FOR WATER IN THE STATE OF UTAH

APPLICATION TO APPROPRIATE WATER

Rec. by 2

Fee Rec.

Receipt #

Microfilmed

Roll #

For the purpose of acquiring the right to use a portion of the unappropriated water of the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements to Title 73, Chapter 3 of the Utah Code Annotated (1953, as amended).

WATER RIGHT NUMBER: 11 - 1149

APPLICATION NUMBER: A70218

1. OWNERSHIP INFORMATION:

LAND OWNED? Yes

A. NAME: Larry Kempton
ADDRESS: HC 72, Malta, ID 83342

B. PRIORITY DATE: July 8, 1996

FILING DATE: July 8, 1996

2. SOURCE INFORMATION:

A. QUANTITY OF WATER: 20.0 cfs

B. SOURCE: Ditch overflow

COUNTY: Box Elder

C. POINTS OF DIVERSION -- SURFACE:

- (1) N 50 feet W 1320 feet from SE corner, Section 25, T 15N, R 13W, SLBM
DIVERT WORKS: Headgates & ditches
- (2) N 360 feet W 40 feet from SE corner, Section 36, T 15N, R 13W, SLBM
DIVERT WORKS: Headgates & ditches
- (3) N 2020 feet W 230 feet from SE corner, Section 36, T 15N, R 13W, SLBM
DIVERT WORKS: Headgates & ditches
- (4) N 2020 feet W 810 feet from SE corner, Section 36, T 15N, R 13W, SLBM
DIVERT WORKS: Headgates & ditches
- (5) N 2020 feet W 1320 feet from SE corner, Section 36, T 15N, R 13W, SLBM
DIVERT WORKS: Headgates & ditches
- (6) N 0 feet W 60 feet from NE corner, Section 36, T 15N, R 13W, SLBM
DIVERT WORKS: Headgates & ditches
- (7) N 2000 feet W 150 feet from S $\frac{1}{4}$ corner, Section 36, T 15N, R 13W, SLBM
DIVERT WORKS: Headgates & ditches
- (8) N 2000 feet W 500 feet from S $\frac{1}{4}$ corner, Section 36, T 15N, R 13W, SLBM
DIVERT WORKS: Headgates & ditches

D. COMMON DESCRIPTION: Clear Creek

3. WATER USE INFORMATION:

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. 43-10116 on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

- Tax Notice Warranty Deed Other _____

3. Source of water Rice Creek/Round Mountain Creek tributary to Round Mountain Creek/Clear Creek

4. Date or priority 12/31/1900

5. Water is used for the following purpose:

- amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
- amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
- amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 20 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	NE	SE	13	16S	27E	Cassia	
	NE	SE	SE				Cassia	
	NE	SE	NE	24			Cassia	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
16S	27E	13	6	23		17	17								35	33	40	40	211
		24	40																40
	28E	19					15												15

Total acres 266

9. Describe any other water rights used for the same purpose as described above 43-10824, 43-00045, 43-02110,

We're not good enough Mormons yet to run water back up hill. I'd like to be able to do that. Answer your question?

Barnett:

It does, I appreciate that.

Larry:

One thing I'd like to add to that. We have this pipeline - OK - we've got screens on it it's got two legs to it. OK, it's got a top leg and that'll carry, they say it'll carry so many Second Foot. OK - then you come down and you drop it into another inlet and then you've got bigger size pipe for about, oh, maybe 500 feet and then you've got another leg on it. So you can fill that up - send a pipe full this way and a pipe full that way. OK, when it gets near that point, it's a little bit iffy - uh - because of your sediment and rocks. I don't mean little gravel, I'm talking about stuff like this and we've got it so no bigger than that will get in there. But we was advised when we first put it in to take it out of that pipeline at that period of time. Because you'll wear your pipe out - now - I don't know - down to Bountiful they was a guy come out and looked at our system and he said that - uh - they had their system in 10 years and they's replacing all kinds of pipe. Because of rock getting into it and he was wondering what kind of a system we had because they'd told him about it. But it was a differnt type of a thing that was a shale situation but so there's times that that water we turn out of them lines we've got our existing Ditches. And it won't get away from us, we can utilize it. And it might not be over 10 days at the most. That we have to take them out and we may be able to put half of the water in the pipe -uh - and let the other half come out. It works on a chute there's a screen here and a chute here with a gate in it. You cram that chute where it's about like that - it'll stop the water enough so it'll drop into the inlet of the top pipeline but it'll shoot all the rocks out that chute and that's the only way you can use it when it's at that stage but it's usually not that way.

Pause

Sundberg:

Can I ask a question? It lists one of the places of use as Lot 1 Section 25 15 North 13 West?

Engineer:

It does.

Sundberg:

How often has that been irrigated out of Rice Creek?

Larry:
What?

Sundberg:
How often has that 40 acres over by Jensen's been irrigated out of Rice Creek?

Larry:
It has not. I've got a pipe going across there right now.

Sundberg:
So it has never been irrigated?

Larry:
It has not but what you're looking at here is nothing to do with Rice Creek. There's also some water there that springs up in that spring up in the meadow OK?

Sundberg:
I thought that's where this 24 Second Feet was going to be diverted to?

Larry:
That's Rose's.

Gary:
Just to answer your question Dave, when we were in some wetter years before he put that pipe across there off of that meadow right along there that used to sub that road out real regular, you didn't go up that road, no uncertain terms. You're not near as old as a lot of us, you might look older but...

Sundberg:
Where was that subbing from?

Gary:
Beg your pardon?

Sundberg:
Where was that subbing from?

Gary:
Out of that meadow of Larry's

Sundberg:
Up on Section 36?

Larry:
No.

Gary:
No.

Larry:
Right in the middle of the road, Dave, where you're driving.

Gary:
When he first put that in there I think you can remember that Harold that used to get wet. You couldn't hardly drive up that road it got real deep.

Sundberg:
My question is can that 40 acres be irrigated out of Rice Creek and has it ever?

Engineer:
That 40 acres you're referring to is Lot 1 Section 25, can that be irrigated out of Rice Creek?

Larry:
Sure it can, I've got a pipe going across the road right now.

Fotheringham:
Your question is has it historically been irrigated? Is that the question?

Engineer:
Historically you haven't irrigated that?

Larry:
I have not.

Engineer:
But you've got a pipeline going across there that you could irrigate out to?

Larry:
Right on.

Sundberg:
It's not a run off situation, I mean as far as natural lay of the land, it does not run that direction?

Larry:
All I'd have to do is make me another Ditch.

Sundberg:
That's all you have to do anywhere isn't it? Put a pipe in?

Larry:
It's down hill if that's what you mean.

Engineer:
OK. At this time I'd like to turn to the Protestants to make sure we've got all of the concerns before us to consider.

Barnett:
Is this the appropriate time before we make a Statement in Protest?

Engineer:
That's fine, it probably would be appropriate now.

Barnett:
Who's the Authority? Who's the Watermaster? On Clear Creek? And what's your name?

Lavern Kempton:
Lavern Kempton.

Barnett:
Lavern Kempton? And how long have you been Watermaster?

Vern:
About 3 years.

Barnett:
3 years? OK. And are you a Watermaster, you know I'm representing an Idaho...with an Idaho irrigator. Are you Watermaster for just the State of Utah or Watermaster for the State of Utah and the State of Idaho?

(1)

These amounts of water were delivered over the Idaho weir net at the points of diversion.

Idaho Water For 1996

Date	Holmgren	Ray	J.C.F.F.	Boyd	Arimo	Stewart	
May 13	7.8	.29	1.6	0	0	5.14	
14	21.1	0	3.1	0	2.0	5.4	
15	29.4	5.5	4.7	3.2	3.4	7.60	
16	30.1	10.0	5.9	4.4	4.8	8.4	
17	30.1	11.4	5.9	5.8	4.8	8.4	12.5 extra down the creek
18	30.1	11.4	5.9	5.8	4.8	8.4	
19	30.1	7.8	4.9	3.2	4.8	8.4	1.0 CFS extra
20	28.63	1.4, 2.8	1.7	1.4	2.0	6.8	
21	24.3	3.1	0	0	2.0	5.36	
22	19.84	3.1	0	0	2.0	4.0	
23	17.26	3.1	0	0	2.0	4.0	
24	15.55	0	3.1	0	0	4.0	
25	13.65	0	3.1	0	0	4.0	
26	24.3	0	3.1	1.0	2.0	5.48	
27	24.3	3.1	0	0	2.0	6.69	
28	24.3	3.1	0	0	2.0	4.0	
29	28.64	5.03	0	.53	2.0	6.8	
30	28.63	7.8	3.03	3.2	2.0	6.8	
31	28.4	6.0	1.7	3.2	2.0	6.8	
June 1	28.63	3.77	1.7	1.97	2.0	6.8	
2	28.63	3.9	1.7	1.1	2.0	6.8	
3	28.63	6.0	2.19	3.2	2.0	6.8	
4	31.52	9.03	5.95	3.48	6.76	10.36	
5	32.89	9.3	6.05	3.55	7.56	11.16	
6	32.89	9.3	6.05	3.55	7.56	11.16	
7	30.13	5.51	6.03	2.78	4.8	8.4	
8	30.13	5.51	6.03	2.78	4.8	8.4	
9	28.63	7.8	3.3	2.78	2.0	6.8	
10	32.18	5.11	4.9	2.76	2.0	6.9	3.99 extra
11	24.63	8.4	3.3	3.1	2.0	6.8	
12	20.18	5.91	3.3	3.2	2.0	6.8	

RECEIVED

CLEAN CREEK
FEB. 5 1997

FEB 07 1997

WATER RIGHTS
SALT LAKE

DEAR MR. SIM,

AT THE WATER MEETING ON JANUARY 21 I WAS DISAPPOINTED IN A COUPLE OF THINGS. THE AGENDA SAID THE WATER COMMISSIONER WOULD GIVE A REPORT, WHICH WAS NOT DONE. A MEETING WAS HELD ON OCT. 7 1996 IN MALTA WITH BOB FOTHERINGHAM, TIM LUKE, ALLEN SERRITT, BOB HOPE AND VERN HEAPTON IN WHICH THEY DISCUSSED HAVING THE REPORTS IN BY DECEMBER 1, 1996. BOB HOPE TURNED HIS REPORT IN. BUT IN TALKING TO FOTHERINGHAM ON JAN. 6 1997 HE INDICATED THAT VERN HAD NOT TURNED IN ANY REPORT AT THAT TIME.

THE AGENDA SAID THAT A FINANCIAL REPORT WOULD BE GIVEN, I DON'T BELIEVE THAT REPORT WAS GIVEN EITHER. MONT CAMPBELL MADE SOME COMMENTS THAT HE MIGHT SEND THE GROUP A BILL FOR CLEANING OUT HIS HEADGATE, I WOULD QUESTION WHETHER THE GROUP SHOULD HAVE TO PAY MONT FOR CLEANING HIS OWN HEADGATE. NO OTHER FINANCIAL REPORT WAS GIVEN THAT I WAS AWARE OF.

PLEASE SEND ME A COPY OF VERN HEAPTON'S RECORDS FOR 1996 WITH WHATEVER FINANCIAL REPORT EXISTS, AND A COPY OF THE MINUTES AND RECORDING OF THE MEETING ON JAN. 21.

THANK YOU

DAVID B. SUNDBERG



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
Robert L. Morgan
State Engineer

1594 West North Temple, Suite 220
Box 146300
Salt Lake City, Utah 84114-6300
801-538-7240
801-538-7467 (Fax)

January 6, 1998

DAVE SUNDBERG
HC 72
MALTA ID 83342

NOTICE TO CLEAR CREEK (LOGAN) DISTRIBUTION SYSTEM WATER USERS

Notice is hereby give that in compliance with Title 73, Chapter 5, Utah Code Annotated, 1953, a meeting of this Distribution System's water users and representatives of the Division of Water Rights will be held **Tuesday, January 20 1998, 3:00 p.m. at:**

The Raft River Rural Electric Corp. Offices
Board Room

Malta ID

The agenda will include the following outline:

1. Hearing the 1997 Minutes.
2. Hearing the 1997 Financial Report.
3. Hearing the 1997 Commissioner's Report.
4. Preparing a budget of salaries, other necessary expenses, and assessments.
5. Recommending a Commissioner for 1998.
6. Reviewing System's Directors and transacting such other business as may properly come before the meeting.

Sincerely,

A handwritten signature in cursive script that reads "Robert L. Morgan".

Robert L. Morgan, P.E.
State Engineer

RLM:LHS:kcp

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

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 ^{David Sessions} ~~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 ^{David Sessions} ~~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

ORDER PROVIDING FOR PRELIMINARY INJUNCTIVE RELIEF - 6

COUNTY COMMISSIONERS

R. LEE ALLEN
JAY HARDY
ROYAL K. NORMAN

Box Elder County

STATE OF UTAH

OFFICERS

CARLA J. SECRIST, COUNTY AUDITOR
LUANN ADAMS, COUNTY RECORDER-CLERK
LEON JENSEN, COUNTY SHERIFF
JON J. BUNDERSON, COUNTY ATTORNEY
MONTE R. MUNNS, COUNTY ASSESSOR-TREASURER
DENTON BECKER, COUNTY SURVEYOR
DEVERE PAYNE, COUNTY JUDGE

Dave Sundberg
PO Box 1
Malta, ID 83342

June 12, 1996

Ref: Dispute Mont Campbell and Larry Kempton

In regards to the tractor in question that we discussed on June 10, 1996.

You believed that Mr. Kempton had taken the tractor that your father had obtained from him in 1989. I have found in discussing the matter with Sheriff Jensen that Mrs. Kempton in fact told Sheriff Jensen that they had the tractor. Since there is a dispute of ownership of the tractor this situation would have to be referred to the civil courts for consideration, there, as we would be unable to prove a criminal, (theft), case.

As we discussed, the situation with the horses falls under this same situation, that being civil in nature.

In regards to the situation with the fence and dispute over the property line that was discussed on June 10, 1996.

At your request I have contacted Sheriff Jensen and Chief Deputy Yeates in regards to this. Since they had been in your particular area the most in the past two months I felt they would know more about this than I.

Deputy Yeates knew nothing except that he knew there was a dispute. Sheriff Jensen on the other hand had been contacted by Mr. Campbell on April 19, 1996. Mr. Campbell was complaining about the fence that was being built and wanted something done about it. Sheriff Jensen advised him at that time to contact an attorney as this was a civil matter, however, it has been found that a Deputy was to have gone to the area in regards to the Campbell complaint. It is unknown what was done at that time, somewhere around April 20, 1996. Apparently there was no need for a report as there is not one on file. Sheriff Jensen was in the area on routine patrol over Memorial Day weekend, noticed fences being built, and talked with Mont Campbell, but, he has not been there to specifically view any disputed fence or property lines.

If you have any questions or we can be of further assistance please contact us.

Sincerely,



Dale F. Ward, Deputy
Box Elder County Sheriff

Minutes Of Meeting Held for Advisory Committee
and Watermaster in Water District 43-B.

A meeting was held at 1:00 PM on Feb. 21, 1997 at the home of Douglas Freestone. Those in attendance were Advisory Committee Members Douglas Freestone, Jay Harper, Roscoe Ward, Jeff Sessions, Boyd Hoskins, Secretary Robert Hope, David Sundberg and Vern Kempton, Watermasters for Idaho and Utah respectively.

It was moved and seconded that Doug Freestone be the chairman of the Advisory Committee. Approval was unanimous.

Doug Freestone read a letter from Allen Merritt of the Idaho Department of Water Resources. The letter pointed out that a controversy may arise from a shared ditch between Jeff Sessions and Ray Jones. Jones wants to transfer water from his upper property to his lower property and this may cause a full ditch for Jones and exclude Jeff Sessions from his share of water. Discussion followed as to how to divide water between Jones and Sessions.

It was moved and seconded that any restrictions in the shared ditch be removed to allow full flow to subsequent culverts where the water is divided between Jones and Sessions. The Watermaster and one advisory committeeman will talk to Ray Jones to decide how a restriction in the shared ditch can best be removed. It was also decided that measuring weirs will be relocated on each ditch where water is divided.

A published notice of application for water permit by Gary Steed to store water in a pond on upper Raft River was discussed. Legal notices were published in the Burley South Idaho Press on Feb. 21, 1997 and again on Feb. 24, 1997. Individual water users may or may not file protests against the storage of water.

Vern Kempton asked whom he should call to verify water measurements in Utah if David Sundberg is restrained by court action from trespassing on property in Utah where measuring weirs are located. A discussion followed. It was decided to talk to the owners of the Utah property to authorize water measurements as needed. It was also agreed that Advisory Committee Members and the Secretary of Water District 43-B may be called to witness measurements when critical measurements reach prescribed amounts. It was also decided that water measurements will be made at the Utah weir at 08:00 hours each day.

A statement was presented to the Idaho Watermaster for him to sign. The statement was to affirm his primary employment was not his job of watermaster and that he would not apply for unemployment benefits from the Water District if and when his employment as watermaster is terminated. The statement was signed and witnessed by three witnesses.

The meeting was adjourned at 4:05 PM.

Douglas Freestone
Committee Chairman
Douglas Freestone

Robert Hope
Secretary
Robert Hope