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JAN 31 2000 83342

Lee Sim
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Division of Water Rights
1594 West North Temple, Suite 220
Salt Lake City, Utah 84114-6300

Dear Mr. Sim:

I was talking to Bob Fetheringham on Jan. 27, 2000 and he suggested that I write a letter to you describing my concerns. Each year we try to discuss these problems at the water meeting, however we can never make a complete sentence without being cut off and ridiculed by Mont Campbell and Larry Kempton so much that no intelligent statement can be made. I have attached a map which I drew of Clear Creek's East Channel and West Channel and the property which it crosses in Utah. I have drawn my ditches in pink and Naf Irrigation Company's ditches in yellow. I numbered Naf Irrigation Co. ditches starting at the top "Rock Quarry" diversion just below the gauging station. They have 12 ditches that I know of. The bottom ones #11 and 12 are almost on the State line.

On May 1, 1998 UDWR and IDWR were going to meet with interested parties at the Naf store and go look at the gauging station to see if it could be made usable. The meeting was cancelled and Harold Jones and I were the only ones not notified. We stayed at the store for a while and then went up to see if anybody was at the gauging station. Nobody was but the creek measured more than 20 cfs, a large portion of which was going out Mont Campbell's ditch which is #1 on the Map. This ditch goes over to Mont's ground in Section 2 and Section 35.

I talked to Vern that night and he said he would turn it to Idaho the next day. The next afternoon some Idahoans asked me to go see why they didn't have any water yet. I went to Jones's diversions #9, 10, 11 and 12 and there was very little water there so I went up to ditch #1 and turned the water down the creek. This was about 3:00 P.M. Around 5:00 P.M. very little was reaching the Idaho weir so I went up to see if Vern was home. His pickup was parked behind Mont's shop so I went toward the headgate where Vern, Mont and Blaine Campbell were apparently taking the board out of the creek. Mont and Blaine came over and Mont grabbed me by the neck and started shaking me and saying they were going to teach me some lessons while Blaine was moving around to get behind me. I grabbed Mont's wrists and jerked him loose and pushed him away and left. Apparently they didn't want me to talk to Vern. The next day the water appeared to be going to Idaho so I didn't try to push the issue any farther. The next week on the 8th of May, UDWR and IDWR and Vern went and looked at the diversions and gauging station. I was quite conspicuously not invited.

On May 5, 1998 The State Engineer sent me a letter saying "It has been reported to us that on Saturday, May 2, 1998 the flow of Clear Creek reached 20 cfs" etc. That was a false report because on May 1 there was more than 20 cfs. Enough was going out ditch #1 that the stream going past my house was not very big. I would not have thought much about it if we hadn't gone up to see if you guys were at the gauging station. I wouldn't have thought to measure it.

On June 18, 1998, IDWR and UDWR had a meeting with us in Malta and Vern and Mont told us that when I turned the water down it made it hard for them to get the board out of the creek behind Mont's ~~shop~~ **shope** which is headgate #5-6 on my map. Mont also complained that he needed the water just a little bit longer to finish up a field. My understanding is that when the creek gets up to 20 cfs it all goes to Idaho whether Mont and Larry have saturated all of

their ground or not. The fact is that I did turn the water down the creek by closing Mont's headgate and it did cause the inconveniences that they complained about.

As always, at the water meeting last February, Vern had no records to discuss even though in the 1998 meeting Larry promised he would make sure Vern had the records available 2 weeks after the water season ended in August. Later that Spring Vern produced a record which has some obvious errors.

Vern's 1998 report shows that up until May 2 all of the water went to Naf Irrigation Co. (Harold and Ray Jones) except for a little bit that went to me. He doesn't show any of the water which was going out Mont's ditch which I turned down and flooded their board so they couldn't get it out. His record doesn't show any water which Larry took either. If in fact the water was all going to Ray like Vern's record shows, I couldn't have turned it down and caused any problem. If Vern's records were true, the only water I could have turned down would be my own. Ray was one of the Idahoans who wanted water and asked me to turn it down. I have a right to shut off my own water, so I didn't turn any water that I didn't have a right to and the State Engineer's letter to me was in vain, if we assume that Vern's records are true.

The fact is that Vern's records are not true. If we assume that Vern's record is true and all of the water was going to Ray in diversions #9, 10, 11 and 12 then they can't blame me for flooding their board because it was already flooded. Vern's 1997 record shows all of the creek going to Ray when it went to Idaho except 0.97 cfs which he says I had. In 1996 he shows 17 cfs to Ray. In 1995 he shows 13 to Ray and 7 cfs to me. In 1994 Vern shows 17 cfs to Ray. So if Vern's records are true they flood their board every year. Unfortunately Vern's records are not true.

For 1998 Harold Jones received a bill for \$1036, which Ray paid. He probably shouldn't have paid it because the water was delivered to Mont and Larry. I have the same problem. The question of whether we have to pay Vern to give our water to Mont and Larry needs to be resolved because these bills are not insignificant amounts of money. It is questionable for the State to hire a water commissioner who cronicly keeps false records.

Another issue which always produces considerable sarcasm and ridicule is the West channel. I have attached a copy of page 140 of Albion vs Naf which explains that in low water the flow is all in the East channel, and the middle channel is used during high water. Nowa days the West channel described in the book has been obliterated so there is only the East channel which always has water in it and what the book called the Middle channel is now called the West channel or the flood channel. Where the West channel branches off there is a concrete turnout for the high water. Most of the decreed ground on the West side of the creek can be irrigated from the West channel. Joneses have some ground which can only be irrigated if there is water in the West channel, so on dry years it doesn't get wet. In the protest hearing in 1996 about Kempton and Campbell's new appropriations Ray Jones tried to explain that the water should go to the ground it is decreed to on the West side rather than going to Rice Creek and Mont's ground in Idaho. Mont interrupted him so much that Ray wasn't able to present his protest.

Another matter which possibly can't be resolved outside of the courtroom is the matter of forcing us to waste water. In 1934, as a result of the federal court order to get the best use of the water, 2 cobblestone ditches were built to carry the creek during low water. This is found in the last full paragraph on page 140 of ~~XXXXXX~~ Albion vs Naf.


Between headgates #1 and 2 the creek sinks toward the West channel. The first ditch carried water past that sink hole. The second cement ditch went from headgate #4 to #5. The paragraph on page 140 says "Constructing bypass ditches will conserve water and is recommended". In 1977 Harold Jones made a ditch from approximately headgate 7 to the State line and could use the same ditch Larry uses which runs from headgate #5 at Mont's shop down to the ditch Harold built. Now Larry won't allow Harold to cross his place with his water but still insists on measuring Harold's water at Mont's shop. The creek sinks about 3 cfs from Mont's shop to Harold's headgate. It goes off to the East through Larry's willow patch toward Round Mountain. The Christensen decree specifies in paragraph 1 that the creek goes on turns when the flow does not exceed 6 cfs measured at the North boundary of Section 36, at headgate #9. Vern claims he is measuring it at #5, Mont's shop according to Naf Irr. Co. bylaws. The Christensen decree in 1918 supercedes the 1912 bylaws and the water should be measured according to the decree. Judge Hurlbutt ordered Vern to follow the decree but Vern still refuses to do so. Since Vern has been watermaster Mont and Larry have taken the water until there is hardly any left and then turn it down the dry channel and it doesn't even reach Ray. We would like it if you instructed Vern to follow the decree. If he waits until the creek gets too small my turn doesn't do me much good either.

Since the conservation ditches have been abandoned the creek has a big shrinkage problem. almost all of it sinks out onto Mont's ground and Larry's ground. Naf Irr. Co. (Harold and Ray Jones) have not chosen to waste water. Naf Irr. Co. (president Kempton, secretary Campbell, Commissioner Vern) have chosen to waste water, onto their own property. So now the question is when do I get water? The rights prior to mine are filled when there is about 13 cfs in the creek. The question is Where in the creek? If there is 20 cfs at the guaging station and 7 cfs is sinking or leaking out Naf Irr. Co. ditches I won't get any water niether before the creek goes to Idaho nor after it comes back at 17 cfs. Naf Irr. Co. has a diversion point just below the guaging station and they could choose to conserve the water, in which case everybody would have more water except the waste water people, Campbell and kempton. If the 13 cfs is determined at the guaging station I could take my water and Naf Irr. Co. could waste theirs if they want to without affecting me. Since Vern has been watermaster the policy has been that I and Naf Irr. Co. (Harold and Ray Jones) have to watch Naf Irr. Co. (president Kempton and secretary Campbell) waste all the water they want to because of their "bylaws!"

Even if a water commissioner is hired who keeps honest books, there is still the question of how much unmeasured water can Campbell and Kempton waste and force Joneses to waste while the rest go without. Ray has wanted to put a pipe from #1 so he can get his water but they claim it has to be wasted according to company bylaws.

These are the main questions that I think need to be resolved on Clear Creek. The other main problem which prevents any progress is that nobody can speak at any meeting without Mont and Larry completely suffocating us with sarcasm and insults. it would be a lot nicer if the meetings could be controlled so other people can speak. I don't know how much can be resolved in next week's water meeting but it would be nice if we could at least make a complete sentence without being cut off.

Sincerely



Dave Sandberg

c Bob Fotheringham

upper division and this is as it should be, for to let a part or all of the waters go to the lower division would mean a loss of most of all of this water depending upon the quantity of water flowing."

On February 20, 1936, the court's commissioners made their report in writing to the court, among other things stating:

"After an exhaustive study of the report of Mr. Hanming, and a review of the reports of former engineering assistants, come now your commissioners and report as follows:

"In general, our findings as reported in our 1934 report were confirmed by our 1935 operations. The present report will be confined to comments on our previous findings as affected by the 1935 operations, and to additional findings and recommendations arising from 1935 operations. The essential portions of our 1934 report have been included in the preamble hereto, and will not again be repeated but will be referred to and are to be considered herewith.

"Only a very small proportion of the waters of Clear Creek is diverted above the point where it emerges from the canyon. After the stream leaves the canyon it has run in various channels in the past and at present, has three well defined channels, the East, Middle and West, all of which carry water during the flood stage. In low water, the flow is all in the East channel and all diversions in Utah are made from the East channel, except a few from the Middle channel during high water.

"The channels are very crooked and through some sections have a dense growth of brush, willows, etc., all of which retards the stream flow and increases transportation losses. During 1933 the East channel was cleaned for about one-half of its length in Utah. During 1934, two sections of cobblestone ditch, totaling about three-fourths of a mile in length were constructed to carry the stream during low water. Further work in straightening and clearing the present channels and constructing by-pass ditches will conserve water, and is recommended.

"Diversion works, consisting of dams, headgates, and measuring devices, are at present very inadequate and those in place in a poor state of repair. Proper and adequate structures should be installed under the supervision of a competent

engineer or water commissioner and are very necessary in order that the waters of the stream may be conserved and equitable distribution be obtained. These structures need not be expensive; and the work might be done by the water users themselves, under competent supervision. Satisfactory distribution cannot be made until such time as more and better structures are installed.

"During the irrigation season of 1935, as in 1933 and 1934, regular measurements were made of the flow of the stream. As in former years, the principal gauging station was the one referred to in the 1934 report as the U. S. G. S. station. Stream flow records for Clear Creek are available for only one year, 1911, prior to the three years during which your commissioners have secured records. The discharge curves for 1911, 1933, and 1935 bear a striking *resemblance* to one another. In fact, they are so much alike, both as to quantity of discharge and time of peak discharge, that one might be led to assume that they indicate a somewhat normal condition. However, taking into consideration the general deficiency of precipitation which has prevailed throughout the watersheds of Idaho and Utah during the past several years, it is probably safe to assume that the discharge of Clear Creek for 1935 was less, rather than greater, than for an average year. It is quite evident that 1934 was a year of abnormally low flow.

"The flow of the creek consists of a high period extending from the latter part of May until about the 1st of July, and a low period covering the remainder of the year. The high period, of course, will vary as to time, duration and maximum discharge in accordance with snowfall and general weather conditions and in some years, such as 1934, there is no high period. The maximum flow recorded is about 120 second feet, but it is quite probable the flow has been even more than 200 second feet in years of heavy snowfall and with temperature conditions conducive to rapid runoff. Indications are that in a normal year, the high period would last for not less than 40 days. The flow during the low period, or that time when the flow is less than 20 second feet, averages about 5 second feet and reaches as low as 1 second foot. The maximum flow in 1934 was only 12 second feet. The change from low to high comes very suddenly with increases of discharge in a single day amounting to over 20 second feet. The drop from high discharge to low is likewise very abrupt. Although

SECTION 1

SECTION 36

SECTION 2

SECTION 35

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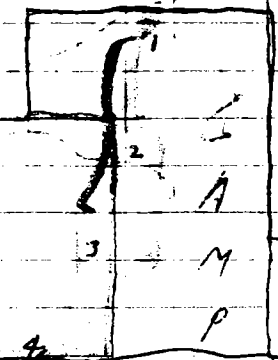
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SECTION 25 11.2

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