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JAN 19 1998

Dave Sundberg

Dec. 14, 1998

Box 1, Malta, Idaho 83342

Department of Water Resources

Norm Young, PE

State of Idaho Department of Water Resources
1301 North Orchard Street, Statehouse mail
Boise, Idaho 83720-9000

Dear Mr. Young,

On June 18, 1998 a meeting was held in Raft River Electric's Board Room in Malta. Present were ; Norm Young, Tim Luke and Allen Merritt from IDWR, Lee Sim and Bob Fotheringham from UDWR, Dave Sundberg, Vern Kempton, Mont Campbell, Vance Campbell and, I think, Blaine Campbell and maybe somebody else from UDWR. The Utah People came in late and while we were waiting I presented copies of a letter which I had written to Tim Luke. Also Allen made some reference to an order given by Judge Hurlbutt modifying his previous preliminary order and asked if I had recieved a letter from Doug Jones. The letter which Doug never wrote should be explained.

A Jones vs Naf and Sessions hearing was held which lasted for two days. Doug was in the courtroom throughout the hearing. The issues discussed were;

1. Sessions wanted "Settler's Right" in the amount of 4.3cfs with priority over the Jones, Holmgren, Stewart and Arimo Rights which are later than 1911 in stead of 3.2cfs as shown in the first preliminary order.

2. Vern wanted to turn the creek on turns when it measures 6cfs at Mont's shop in stead of the way it is shown in the first order.

3. Joneses wanted Sessions to not have "Settler's Right" at all.
The Court ruled;

1. Sessions does not have "Settler's Right.

2. Vern should put the creek on turns according to the Utah (Christensen) decree, ie, when it drops to 6cfs at Harold Jones' headgate.

A few days later Jay Harper called saying Doug Jones wanted to talk to me so I called Doug. He wanted me to turn Sessions 4.3cfs with priority over the post-1911 rights plus any extra water that might be in the creek and he had a schedule for me to follow when the creek was low in which Joneses would get 155 inches for three days and Sessions would get it for 3 $\frac{1}{2}$ days. The preliminary order (par. 5) says 3 equal days. I don't like secret business so I asked Doug to send me a letter explaining what he wanted me to do.

Doug called me the next day and again the next day after that insisting that I turn 4.3cfs "Settlers Right" to Sessions and he kept asking me "what it would take" to get me to turn it. He made it clear that this favor would be paid for. He said that the department's position is that Sessions has the "Settler's Right" regardless of what the court orders. That court order cost Harold Jones a lot of money and I didn't feel like I could sell water to Sessions contrary to that order so I asked Doug to write me a letter with IDWR heading explaining what he wanted. I assumed that he would not do it.

The court asked Patrick Brown to write the order so I called Mr. Brown and asked him for a copy. He sent me a copy of part of the hearing transcript in which the court explained very clearly what the order should be. In our meeting on June 18, Allen had a copy of the same transcript pages that I had and a letter from Roger Ling. I recognized these papers in his hand when he asked me if I had recieved a letter from Doug Jones. I told him "no" and asked if I could look at his papers, assuming that he wanted to resolve Doug's problem. He said no, and tucked the papers away giving me the impression that he didn't want to resolve the problem, or maybe he was just happy to know that Doug didn't write the letter. I think Allen likes to avoid unnecessary problems and Doug's problem was definitely un-necessary.

After the Utah people arrived you were pretty much in charge of the meeting and I was impressed by your ability to find the truth and arrive at solutions to the problems. You started by asking everyone's opinion if the court's preliminary order is still in effect. Sim and Fotheringham assured us that they never recognized the order. However they finally conceded that the parties are still bound by the order.

I have enclosed some documents concerning the 1997 water meeting which show that UDWR and IDWR were aware that Joneses did not agree to Vern being watermaster. The order says Vern cannot be watermaster except by agreement from Joneses. The order says "such person or persons" (plural) so IDWR did not comply with the order in 1996 by appointing Vern "deputy watermaster" which certainly fits under the plural. This with Doug Jones' problem indicates to me that IDWR shares UDWR's opinion that SRBA court decisions are not considered to be valid. It is no wonder they are having a hard time replacing judge Hurlbutt, every lawyer in Idaho knows that IDWR will not honor the court's decisions.

Sim and Fotheringham admitted that the parties are bound by the court order, therefore they know that Vern is violating the order by being Utah's commissioner and Kemptons are violating the order by not allowing Joneses any voice in the water meetings. The DWRs cannot ignore the written objections which Joneses have filed and neither can Kemptons, Campbell and Sessions who vote for Vern every year.

Other concerns discussed in these 1997 water meeting documents are;

- A, The measuring device at the gauging station
- B, Water not going to Idaho when it should
- C, Vern fakes records without actual measurements
- D, Illegal diversions to Kempton farms
- E, Kempton and Campbell applications to appropriate more water
- F, Forfeiture of Stewart and Arimo rights
- G, UDWR does not keep records.

These same concerns were discussed in my May 20 letter to Tim Luke and most of them were discussed in the June 18 meeting. On June 20 Tim wrote me a letter saying, in part, that he believes a number of the issues were either addressed or resolved in the meeting. While Tim probably had good intentions, the fact is that none of the issues were resolved and they won't be as long as nothing is written down. In order to discuss these issues in their present unresolved condition, I am including the documents which I have received concerning the June 18 meeting. They are stapled together and include a May 5th letter from Robert L. Morgan, May 12 from Norm Young, June 1 from Allen Merritt, June 8 from Tim Luke, June 20 Luke, and a June 23 from Morgan.

In discussing these issues I will lump A, B, and C, together. Throughout the meeting Vern and Mont Campbell repeatedly insisted that the water should not go to Idaho when there is only 20cfs. During the five years that Vern has been watermaster he has not turned the water to Idaho when there was 20cfs. This is one of the reasons he is being sued by Joneses.

In Morgan's May 5th letter he says "It has been reported to us that on May 2, 1998 the flow of Clear Creek reached 20cfs--!" This was a false report. On May 1 and May 2 I videotaped the measurements and there was more than 20 cfs both days. The reason we videotaped it was that there was supposed to be a meeting on May 1 with the DWRs and interested parties to discuss a measuring device. Bob Fotheringham "could not be there" so the meeting was cancelled without notifying me. Harold Jones and I went to the "meeting" and then went up to the GS to see if the DWRs were up there. The creek measured more than 20cfs so we taped it. Some Idahoans were complaining the next day because it had not been turned yet so I turned it down and taped the measurement.

On May 8, 1998, the DWRs and Vern had another meeting which I was not invited to attend. Tim Luke's June 8 letter documents their decisions:

1st paragraph, The DWRs agreed that there will be no recording device. In other words, the Federal Decree is no more valid than SRBA court orders.

3rd paragraph, A rated section behind Scoffield's house could be used in stead . This was an obvious choice since UDWR people are familiar with Scoffield's threats to sue or kill me if I go in his yard. In the June 18 meeting Fotheringham said that this is just a fence dispute, but if you read Scoffield's letter which was attached to my May 20 letter to Tim Luke, it says if I go look at my headgate in his yard he will sue me. In the videotape of when he threatened me with a gun, he said he is going to put a big hole in me if I go look at my ditch. In the Box Elder court Scoffield testified that he is harrassing me because I am interfering in the water. As far as the fence dispute is concerned, Scoffield et al put a one wire fence on my property and had his lawyer send me the letter. We removed the fence and he has never put it back. The headgate where the measuring board has been is my headgate, so nobody can legally stop me from going there, which is the main reason UDWR doesn't like it.

The meeting which was to be on May 1 was because I and some others asked the DWRs to do something to follow the Federal decree. I was not impressed by the DWRs ability to avoid my presence.

In the 1997 water meeting documents, the last document is a memo from Allen Merritt to Norm Young et al documenting the 1996 meeting. I numbered the paragraphs and the lines in par. 3. In par. 2, "the agencies" wanted one person to deliver water in both states. In par. 3, lines 2-3, two other people were rejected before the issues were even discussed, mainly by the agencies, who wanted an experienced person, Obviously Vern. Southworth had been a watermaster for several years in Utah but that was not the kind of experience they wanted. In par. 3, lines 4-6 the agencies decided that Utah would choose a commissioner and offer him to Idaho. Kempton voted twice and Jones could not vote (lines 8-11). In lines 12-14, the Idahoans never voted directly. In par. 4, the "vote" appears to have been unanimous. We will come back to that. In lines 14-25, Bob Hope was to oversee Vern etc. This year Bob told me that he has never seen the Idaho weir or the guaging station, so his oversight didn't really help much.

To understand the "vote" I will refer to a document which is a memo from Frank Hitchcock to Allen Merritt dated May 22, 1996, which documents a meeting about a month before the "vote". I have numbered the paragraphs. Numbers 27, 30, 31, 32, 34, and 41 discuss the Holmgren vs Stewart and Arimo problem. After the meeting, Stewart and I went with Luke and Hitchcock and looked at Stewart's measuring device and one of the dams which Holmgren had put across Stewart's ditch. There were other dams across Stewart and Arimo's ditches and Holmgren was not allowing any water to go to either one. In My letter to Tim on May 20, 1998, I showed how Vern was keeping false records showing that Stewart and Arimo were receiving water when in fact Holmgren was taking it all, along with other water which Vern shows as extra water down the channel.

A month later, in the water meeting, rather than have a vote, Allen wrote down the amount of water each user had and then said, "Well Mr. Holmgren, it looks like you have the majority vote, do you want Vern to be watermaster?" Holmgren said "Yes". Allen said, "Well I guess that takes care of that, is that all right with you Mr. Sessions?" Jeff said "Yes". Then Hoskins got his turn. Then Stewart and Arimo decided that Bob Hope would do theirs. Paragraphs 4 and 5 were more mixed up than the memo shows. Later Allen said "Is that acceptable Mr. Jones?" Ray said "I guess". Allen left no real choice or even a clear understanding of what he was doing. Allen pushed his candidate through without even a clear majority vote.

The reason Holmgren wanted Vern is obviously because Vern was keeping false records. In the 1998 water meeting we discussed the Holmgren-Stewart & Arimo problem and this Spring Holmgren took the dams out of their ditches. This

problem was resolved very inexpensively by removing the dishonest watermaster. Most of the problems on Clear Creek could be resolved easily if the DWRs would follow court orders, rather than trying to push their own one-sided projects. If the DWRs had followed the court order Vern would not have been taking Idaho water on May 2, 1998 and none of this problem would be in existence now.

In Tim Luke's June 20 letter he says "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." I have never received any indication that Sim sent Vern any letter of direction, although I did receive the June 23 letter from the State Engineer which is apparently threatening to prosecute me. Although it is not specifically addressed to me, as far as I know I am the only water user who received this letter.

This Summer when the creek dropped down to 36cfs and should have all gone to Idaho for 12 days, in the afternoon I found Vern and he said he had not had time to look. His sarcastic attitude showed that he knew very well that he was taking Idaho water. So either Sim did not write him the instructions that he agreed to do in the June 18 meeting or else Vern has no intention of following them. I'm guessing that the State Engineer's prosecution threat is Sim's answer to the whole June 18 meeting. Every threat I have gotten from Sim has been while Kemptons were doing something dirty. In the water meeting documents, "G, UDWR does not keep records" was the result of Sim's threats and then we asked for records and he said there wasn't any. We asked both DWRs to record the 1997 water meeting. Two thirds of the way through the meeting Sim acted surprised and said he forgot to turn on his recorder's microphone so no recording was available. He has a whole bag full of tricks to evade the truth and make confusion while Kemptons take everybody's water.

In the June 18 meeting Sim showed us Vern's records for 1997 which had just been received by his office, Fotheringham had not had a chance to see it yet. Shortly thereafter I received a bill for \$330 which showed last year's bill paid and this year's bill due in May, obviously next May. On Oct. 26 1998, I received a letter from Sim threatening to prosecute me because my bill had "not been paid for at least two years". The same day I also received a letter saying that the State Engineer has approved Kempton's applications to divert Clear Creek water into Rice Creek and irrigate new ground. Whenever UDWR and Kemptons are doing something dirty Sim will publish dirty paperwork about me.

Some of us have requested reconsideration and I am sending you a copy of my request because I think it is relevant to the Idaho water users. It appears that UDWR intends to approve rights as fast as Kemptons can develop the ground. In my May 20 letter to Luke I included copies of some of the rights Kemptons are applying for. These involve 1400 acres of ground being irrigated.

As you know, Raft River Valley is a critical groundwater area. The valley has settled over 3 feet because of groundwater depletion. Clear Creek only runs for a short while in the Summer and our farms depend on the high water. On Sept 14, 1932 Judge Johnson filed an Opinion upon which the Federal Decree was based. On page 193 of the "Black Book" he says, "It is undoubtedly true that at the present time the demand upon the flow of Clear Creek exceeds the capacity of the stream normally to supply." On page 196 he says "No decree of court ever added a drop of water to the flow of any stream." Kempton's new water rights will not cause Clear Creek to produce more water. The stream is still over taxed. The only difference is that the ground water is lower and it takes more water to irrigate the same ground. The only reason Kemptons have so much extra water is because they are taking water from everybody else.

On Jan. 6, 1997, Fotheringham told my brother and I that the water that Stewart is pumping from his well is Clear Creek water and therefore his rights have been filled and he doesn't need to take surface water. Obviously this goes for Arimo, Holmgren and Harold Jones. He told us that as long as Kemptons are just taking Idaho water it is none of our business. Sim and Fotheringham know they are defrauding Idaho water users. The dirty documents they publish about me whenever they or Kemptons get caught doing something just show how dirty they intend to be. So far they have never produced any facts to support their threats except that on May 2 I turned the water to Idaho two days after Vern should have turned it. I may not have been covered by insurance, etc., but sometimes somebody has to do something besides be scared of Kemptons. If Kemptons are allowed to start developing their Rice Creek desert with Clear Creek water, the entire Raft River valley is going to be that much drier and the people that much poorer. Kemptons don't quit just because they gain a little bit. They will keep filching everything they can until they run their neighbors broke or until somebody stops them. Every time they filch something they are that much richer and their victim is that much poorer. Kemptons and the DWRs have been running the people on Clear Creek ragged.

If you read the memorandum decision approving these new rights, you will see that it is virtually incoherent and does not even approve what the applications were for. This memorandum basically gives Vern the right to take Clear Creek water into Rice Creek whenever he wants to. If Kemptons are allowed to filch the rest of us out of existence while they develop their 1400 acres of desert, it will be \$700,000 worth of property value transferred from us to them, according to Utah tax assessment values.

In 1996 and before, all of the water that Kemptons have taken across the Clear Creek road was illegal. Utah Code 73-3-1 says "Rights to the use of the unappropriated public waters in this state may be acquired only as provided in this title. No appropriation of water may be made and no rights to the use thereof initiated and no notice of intent to appropriate shall be recognized except application for such appropriation first be made to the State Engineer in the manner hereinafter provided, and not otherwise." The water they have taken across the road in 1997 and 1998 is doubtfully legal because the applications were not approved.

In 1996 the evidence given in court showed that Vern Kempton was illegally distributing water contrary to the existing decrees. The court ordered the DWRs to find somebody else. In 1996 the DWRs refused to do so. In 1997, IDWR gave in after a virtually unanimous vote of the water users elected someone else. UDWR still refuses to follow the court order. Kemptons, Sessions and Campbell and Naf Irrigation Co. still refuse to follow the court order even though they are parties to the lawsuit. The Federal decree ordered that a measuring device be used at the gauging station. Both DWRs, Kemptons, Sessions and Campbell still, after at least a dozen meetings, they still refuse to follow the court order. The Christensen decree in Utah says that the creek should go on turns when it measures 6cfs at the North boundary of section 36, which is Harold Jones' headgate. Judge Hurlbutt ordered Vern to follow the Christensen decree. Vern waited until there was not enough water to even reach Jones' headgate and then gave Joneses their turn this year, even though both states have ordered him to do it right.

The State Engineer granted our request for reconsideration. This has cost the water users many thousands of dollars. The water that Vern has illegally distributed in the last 3 years has cost the other water users hundreds of thousands of dollars in lost crops, pumping expenses etc. The only reason the DWRs have ever given for refusing to follow the court orders is that they don't want any unnecessary expense for Kemptons and their co-defendants. IDWR has been one of the main supporters of the Kempton et al fraud, and you are the only person in that agency who has shown any inclination to do otherwise.

I hope that you will consider these documents and the issues involved and find some way that you or your agency can help us resolve the problems which are continuing to plague this distribution system.

Sincerely


DAVE SUNDBERG

attachments;

1997 water meeting papers

Notice from Utah

Notice from Idaho

Letters from Ray Jones to State Engineer and IDWR

Letters from Harold Jones to IDWR and State Engineer

Letters from Dave Sundberg to IDWR and State Engineer

Memmo from Allen Merritt to Norm Young et al

June 18, 1998 documents

May 5 letter from Robert L. Morgan

May 12 letter from Young to Morgan

June 1 letter from Merritt to Sim

June 8 letter from Luke to Fotheringham

June 20 letter from Luke to Sundberg

June 23 letter from Morgan to ?Sundberg?

May 22, 1996 Memo from Hitchcock to Merritt

Request for reconsideration of decision to approve new water rights

Letter

Memorandum decision

Pages 5,29,53, of a transcript

Kempton applications nos. 1152 and 1151

Pages 58,60,64, of the transcript

Paragraph 6 of Christensen decree

Pages 81-83 of the transcript

Water assessment notice

Oct. 26,1998 letter from Sim to 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 2, 1997

DAVE SANDBERG
HC 72
MALTA, ID 83342

NOTICE TO CLEAR CREEK 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 21, 1997, 3:00 p.m. at:

Board Room of the Raft River
Rural Electric Corp. Offices

Malta ID

The agenda will include the following outline:

1. Hearing the 1996 Minutes.
2. Hearing the 1996 Financial Report.
3. Hearing the 1996 Commissioner's Report.
4. Preparing a budget of salaries, other necessary expenses, and assessments.
5. Recommending a Commissioner for 1997.
6. Reviewing System's Directors and transacting such other business as may properly come before the meeting.

Sincerely,

Robert L. Morgan, P.E.
State Engineer

RLM:LHS:kcp





State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

PHILIP E. BATT
GOVERNOR

January 2, 1997

KARL J. DREHER
DIRECTOR

MEETING NOTICE

Dear Clear Creek Wateruser:

The Director of the Department of Water Resources has scheduled a meeting of waterusers of Clear Creek for the purpose of appointing a watermaster or deputy watermaster for the 1997 season.

The meeting will be held in the Board Room of the Raft River Rural Electric Cooperative Office in Malta at 3:00 pm on Tuesday January 21, 1997. (Note that this meeting follows the Upper Raft River District meeting which starts at 1:00 pm, same date and place.)

Karl J. Dreher
Director

by Allen Merritt
Southern Region Manager

Malta, Idaho
January 14, 1997

Utah State Engineer
1636 West North Temple,
Salt Lake City, Utah 84116

Mr. Morgan,

I understand we are having a meeting to elect a watermaster and possibly two. The order given by Judge Hurlbutt states that the party that is acting as watermaster shall not be party to this lawsuit, unless by agreement by both parties of this lawsuit. Last year the way Mr. Sim allowed everyone to vote except Harold and Ray Jones was not right. I am hereby notifying you that I WILL NOT agree to Vern Kempton being watermaster.

Vern makes fake records when he doesn't even measure the water. He doesn't even turn the water according to decrees or established practices. He turns water to his own farm when the water should not even be in Utah.

I am also requesting the State of Utah cooperate with the State of Idaho to install an automatic measuring device at the USGS Gauge Stations so that the Watermaster can be held responsible and not deceive the waterusers.

I am requesting that an official recording be made of the meeting on January 21. I am aware that Mr. Sims and Mr. Fotheringham did not keep records of past meetings.

Sincerely Yours,

Ray Jones

C
B
D
A
G

Malta, Idaho
January 14, 1997

State of Idaho
Department of Water Resources
Twin Falls, Idaho

Mr. Merritt,

I understand we are having a meeting to elect a watermaster and possibly two. The order given by Judge Hurlbutt states that the party that is acting as watermaster shall not be party to this lawsuit, unless by agreement by both parties of this lawsuit. Last year the way you allowed everyone to vote except Harold and Ray Jones was not right. I am hereby notifying you that I WILL NOT agree to Vern Kempton being watermaster.

C
B
B D
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A
I am also requesting the State of Idaho cooperate with the State of Utah to install an automatic measuring device at the USGS Gauge Stations so that the Watermaster can be held responsible and not deceive the waterusers.

G
I am requesting that an official recording be made of the meeting on January 21. I am aware that Mr. Sims and Mr. Fotheringham did not keep records of past meetings.

Sincerely Yours,

Ray Jones

Malta, Idaho
January 13, 1997

State of Idaho
Department of Water Resources
Twin Falls, Idaho
Dear Mr. Merritt.

Concerning the water meeting that is coming up January 21, 1997 to appoint Water Master for Clear Creek Water Users, you indicate in your letter that you are appointing a Water Master or Deputy Water Master. It also indicates that you intend to appoint Lavern Kempton again.

In the meeting last year on June 13, 1996 the Upper Division elected Lavern Kempton, without allowing any representation of the Plaintiffs, Harold and Ray Jones. This is contrary to Paragraph 1 of the Court Order which says such persons or persons shall not be the parties to this lawsuit, unless by agreement between the parties to the Lawsuit.

In the meeting last year, you allowed every one to vote except Harold Jones. First off, you asked Steve Holmgren who he wanted for Water Master, under the assumption that he had the majority vote by himself. Then next you asked Jeff Sessions if that was alright. If you remember, Arimo and Stewart did not Elect Lavern. They hired Bob Hope because Lavern refused to turn their water. Then finally you asked Ray if that was Acceptable, Harold Jones was not allowed to vote.

Two other persons were available, that could have taken the job. They were rejected with your encouragement.

In the water meeting 1995, Larry Kempton, Lavern Kempton, and Mont Campbell agreed over the objections of Joneses and Sundberg that the water should not go to Idaho when it got to 20 sec. feet. They told Joneses and Sundberg *ON AT* least 3 other occasions that it should not go to Idaho at 20 sec. feet. Their obvious intentions is to defraud the Idaho water users.

Lavern Kempton has intentionally not turned the water according to the decree or the methods used by the previous Water Master. We request that an automatic measuring device at the old guaging station be installed.

Kempton and Campbell have applied for new appropriations that will considerably increase their consumption of Clear Creek water. These new rights can only be satisfied if Lavern Kempton is Water Master. As long as Lavern is Water Master Kempton and Campbells consumption will continue to increase at the expense of the other water users.

In the hearing on November 20, 1996 in Brigham City, Utah both the assistant State Engineer of Utah Division of Water Resources, and Kempton and Campbell's lawyer, stated that it sounded to them that the problems in Clear Creek were distribution problems.

We request for the Meeting Jan. 21, 1997 be officially recorded.

Sincerely yours,

SIGNED BY HAROLD JONES
DJ
DEC 14 1997

Malta, Idaho
January 13, 1997

Utah State Engineer
Robert L. Morgan
1636 West North Temple
Salt Lake City, Utah

Dear Sir,

This is concerning the Water Meeting to be held January 21, 1997 in Malta, Idaho. It is to appoint a Water Master for the Clear Creek Water users.

In the meeting last year on June 13, 1996 the Upper Division elected LaVern Kempton. without allowing any representation of the Plaintiffs, Harold and Ray Jones. This contrary to Paragraph 1 of the Court Order which says such person or persons shall not be the parties to this lawsuit, unless by agreement between the parties to this lawsuit.

In the meeting last year Mr. Merritt allowed every one to vote except Harold Jones. First off, he asked Steve Holmgren who he wanted for Water Master under the assumption that he had the majority vote by himself. Then next he asked Jeff Sessions if that was alright. Arimo and Stewart did not elect LaVern. They hired Bob Hope because LaVern refused to turn their water. Then finally Mr. Merritt asked Ray if that was acceptable. Harold Jones was not allowed to vote.

Two other persons were available, that could have taken the job. They were rejected with Mr. Merritts encouragement.

In the water meeting 1995, Larry Kempton, LaVern Kempton, and Mont Campbell agreed over the objections of Joneses and Sundberg that the water should not go to Idaho when it got to 20 sec. feet. They told Joneses and Sundberg on at least 3 other occasions that it should not go to Idaho at 20 sec. feet. Their obvious intentions is to defraud the Idaho Water Users.

LaVern Kempton has intentionally not turned the water according to the Decrees or the methods used by the previous Water Master. We request that an automatic measuring device at the old guaging station be installed.

Kempton and Campbell have applied for new appropriations that will considerably increase their consumption of Clear Creek water. These new rights can only be satisfied if LaVern Kempton is Water Master. As long as LaVern is Water Master, Kempton and Campbell's consumption will continue to increase at the expense of the other water users.

In the hearing on November 20, 1996 in Brigham City, Utah, both the assistant State Engineer of Utah Division of Water Resources, and Kempton and Campbell's lawyer, stated that it sounded to them that the problems in Clear Creek were distribution problems.

We request for the Meeting January 21, 1997 be officially recorded.

Sincerely Yours,

SIGNED BY HAROLD JONES
DS
DEC 14 1997

Dave Sundberg
Box #1
Malta, Idaho 83342
January 13, 1997

Allen Merritt
Idaho Dept. of Water Resources
1341 Filmore St. Suite 200
Twin Falls, Idaho 83301-3380

Dear Mr. Merritt:

J
On January 6, 1997 my brother and I talked to Bob Fotheringham in Logan about the meeting to be held in Malta on January 21 about Clear Creek water. Mr. Fotheringham indicated to us that he has some apparent desire to adjudicate the water which is decreed to Idaho and cause some Idaho users to forfeit their rights to receive water from Clear Creek.

B
A
Larry Kempton, Vern Kempton and Mont Campbell have each told me and others that it is their intention to not turn the water to Idaho at the time specified in the Johnson Decree. As watermaster, Vern Kempton has, in fact, not turned the water according to the decrees, nor according to past historical customs. He has been able to get away with this partly because there is no automatic measuring device at the USGS gauging station, as specified in the Johnson Decree. I am requesting that your agency cooperate with the Utah State Engineer to replace the automatic device.

C
The fact that there is no automatic device has allowed Vern to turn the water wrong and keep falsified records to cover himself. The automatic device should be installed before the Creek starts to rise in April and should be agreed upon as to payment in the meeting on January 21. A small amount of channel cleaning will be necessary. This should be resolved in the meeting.

6
The meeting on June 13, 1996 was the result of a court order. Paragraph 1 of that order says, in part, that the watermasters "shall not be the parties to this lawsuit unless by agreement between the parties." Your system of preferred voting was, I'm sure you know, intentionally unfair to Harold Jones, who was not invited to vote. I am requesting that you cooperate with the Utah State Engineer to assure that the meeting on January 21 is recorded on audio tape and that a competent official recording be available to the public.

Sincerely,

Dave Sundberg

Dave Sundberg
Box #1
Malta, Idaho 83342

Robert L Morgan
Utah State Engineer
1636 West North Temple
Salt Lake City, Utah 84116

Dear Mr. Morgan:

F On January 6, 1997 my brother and I talked to Bob Fotheringham in Logan about the meeting to be held in Malta on January 21 about Clear Creek water. Mr. Fotheringham indicated to us that he has some apparent desire to adjudicate the water which is decreed to Idaho and cause some Idaho users to forfeit their rights to receive water from Clear Creek.

I am requesting that the representative of the State of Utah should present a clear explanation of the position taken by the State of Utah concerning the Idaho decreed rights. This information will be necessary for the distribution of water and needs to be discussed at the meeting.

Mr. Fotheringham also expressed a desire to see Vern Kempton reappointed as water commissioner. As you know, the meeting held on June 13, 1996 in Malta was the result of a court order from the Idaho Fifth District Court. Paragraph 1 of that order says in part that the watermasters "Shall not be the parties to this lawsuit unless by agreement between the parties." Mr. Sim and Mr. Fotheringham were quite careful to make sure that the Plaintiffs were not allowed to vote at the meeting. Vern Kempton, a Defendant, was appointed watermaster in defiance of the agguements of the plaintiffs and myself. Larry Kempton, a Defendant, was allowed to vote in behalf of the Plaintiffs, very much against their and my protest.

The court order referred to above was agreed to in open court by the Defendants. Their refusal to follow the order was disgusting, but not surprising. Your agency's failure was both. If your agency appoints Vern Kempton again this year, we will probably be forced to request the First District Court in Brigham City to appoint somebody in accordance with paragraph 8 of the Christensen decree.

6 Lee Sim has informed me, and Mr. Fotheringham has confirmed it, that no records have been kept of any of the meetings concerning Clear Creek. Since they claim they are trying to understand and resolve the problems, I find it pathetic that they refuse to produce or even record any documents. Their wisdom must be either infinite or very deficient. I am hereby requesting that any documents your agency has received or receives about Clear Creek be made public documents and be made available to people. Also, that any meetings held with your agency or consultations

with your agency be reported with reasonable accuracy, and the reports be public documents. The people on Clear Creek have a right to know what is being pretended in our absence.

In the meeting in Malta on June 13, 1996, several things were said which were not true, and no record was made except in Sim's and Fotheringham's memory. I am requesting that the meeting on January 21, 1997 be recorded on audiotape, and that your agency cooperate with the Idaho agency to assure that a competent official recording is made available.

I am requesting that the distribution on Clear Creek water be made according to the percentages shown and used by Guy Sundberg and the other past watermasters who knew what they were doing, rather than some new method concocted in secret by Mr. Wanggard, who admitted on November 20, 1996 that he does not know what he is doing. It should be made clearly understood in the meeting on January 21 that Sundberg's method will be used in 1997 without any giant new water rights for Campbell and Kempton.

Larry Kempton, Vern Kempton and Mont Campbell have each told me and others that it is their intention to not turn the water to Idaho at the times specified in the Johnson Decree. As watermaster, Vern Kempton has in fact not turned the water according to the decrees, nor according to past historical customs. He has been able to get away with this partly because there is no automatic measuring device at the USGS gauging station. I am requesting the State Engineer to cooperate with the Idaho agency to replace the automatic device.

The fact that there is no automatic device has allowed Vern to turn the water wrong and keep falsified records to cover himself. The automatic measuring device should be installed before the Creek starts to rise in April and should be agreed upon as to payment in the meeting on January 21. A small amount of channel cleaning will be necessary. This should be resolved in item 4 of the agenda.

Sincerely,

Dave Sundberg

FROM: Allen Merritt

DATE: June 17, 1996

TO: Norm Young, Tim Luke, Jim Stanton
CC: Frank Hitchcock, Pat Brown, Roger Ling

SUBJECT: Special Meeting of Clear Creek Waterusers

On June 13th at 2:00pm a special meeting of Clear Creek waterusers was held in the Raft River Rural Electric Cooperative Board Room in Malta, Idaho. In attendance were Clear Creek waterusers from both Idaho and Utah, representatives from both state water resource agencies, other interested parties including the watermaster from Upper Raft River. The attached copy of the sign up sheet documents those in attendance. The purpose of the meeting was to see if a watermaster could be selected to oversee the delivery of the Clear Creek water to the satisfaction of all parties concerned.

2 Early in the meeting both agencies indicated that it would be desirous to elect one person for delivery of water in both states for continuity and economy but not an absolute requirement. Both agencies described how watermasters are elected in the respective states. I indicated that after research it was determined that presently Clear Creek is part of the Upper Raft River Water District and that technically for 1996 we would be seeking a deputy watermaster to do the job. I indicated that the watermaster could appoint a deputy or the director could appoint one but before doing so we wanted to understand the wishes of the waterusers.

3 1 After discussion about voting and other related issues including
2 the possibility of a Mr. Southwick, present at the meeting, and a
3 Mr. Richard Savio, not present, being willing to take on the job;
4 the Utah Water Resource representatives suggested that Utah
5 waterusers elect a commissioner (watermaster) and then see if the
6 Idaho waterusers could accept their commissioner. Their vote was
7 one vote per wateruser. Mr. Vern Kempton was reaffirmed or elected
8 as the commissioner in Utah by majority vote. There was a brief
9 discussion about Larry Kempton voting for Naff Irrigation Company
10 even though Jones had the most shares but since Larry Kempton was
11 the acknowledged president of the company it was not disputed
12 further. Vern Kempton was then offered to the Idaho waterusers for
13 consideration but they never really got around to voting directly
14 for him. Instead the discussion got side tracked to the
15 possibility of someone different in Idaho working with Vern in
16 Utah. Finally a motion was made that Mr. Hope, the watermaster for
17 Upper Raft River, would oversee Vern Kempton who would be the
18 deputy watermaster in Idaho. They would jointly measure the gage
19 in Utah for turning water between the states. Hope would also
20 oversee Vern's measurements in Idaho. Mr. Hope only agreed to this
21 since they estimated that the water to Idaho would probably not
22 last much longer than a few more weeks. Mr. Ray Jones asked a
23 point of clarification in that in this arrangement "who would he
24 call if he had a problem with his delivery?" I told him it would
25 be my understanding that he would call Mr. Hope. Once deciding to

vote based on cfs the vote was:

| | <u>CFS</u> | <u>VOTE</u> |
|------------|------------|-------------|
| Armo | 4.8 | Yes |
| Holmgren | 30.0 | Yes |
| Jones | 7.8 | Yes |
| Naff Store | 3.2 | Yes |
| Stewart | 8.4 | Yes |
| Sessions | 4.9 | Yes |

4
5
Discussion then turned to the matter of compensation for the watermasters. It was indicated that the Clear Creek waterusers in both states had a meeting earlier in the year and had elected Vern Kempton as watermaster. At that meeting the salary was set at \$800/month, based at not gone below the Idaho weir to turn water. Mr. Hope indicated that he was getting \$65/day or \$30 for part of a day. Mr. Kempton offered to do his present duties at his previously set salary and accept only gas expenses for work below the Idaho weir. Mr. Hope offered to oversee things for \$65/day. These proposals ran into opposition from Stewart & Armo. It was finally agreed that Vern would not go below the Idaho weir and that his salary would remain the same, to be shared by all users based on water delivered, as the earlier meeting had prescribed. Mr. Hope would do the measurement of the Stewart & Armo diversions and charge Stewart & Armo his time at \$8.00/hour. In addition the oversight work by Mr. Hope would be \$8.00/hour charged to all Idaho users and prorated based on water delivered.

6
*Note that Sessions, Jones and the Naff store are diverted at the Idaho weir. The Holmgren rights although diverted below have been measured at the Idaho weir as described in the Settler's decree, leaving only Stewart & Armo to be delivered below the Idaho weir. It was explained that historically once water goes over the Idaho weir that Holmgren has to provide all of the Stewart & Armo rights and then uses what is left.

7
It was agreed that Hope and Kempton would prepare a joint report of delivery at the end of the season. It was also agreed that Kempton would send out his bills and that our office (IDWR - Southern Region) would send out the bills for Mr. Hope for his services to the Idaho users.

8
Utah Water Resources proposed that we have a meeting this fall to go over delivery this year and to try to setup a joint water district meeting for next year. One issue raised was that of direction to the watermasters on how to treat the 43% upper & 57% lower split and where it is to be measured. Historically the users say the 57% is measured at the Idaho weir. The decree directs "measured at their respective points of diversion." In light of the *note above it was decided not to change the described historical manner of measurement until the complete record of the decree can be reviewed by the agencies or further direction is given by the courts.

9 I recommend that the Director make the appointment of Mr. Kempton as deputy watermaster and extend the duties of Mr. Hope to include Clear Creek consistent with the foregoing. I have related this information to Tim Luke and Tim will send out appointment papers to Kempton and I will send a letter to Hope extending his appointment to Clear Creek.

22-141 50 SHEETS
 22-142 100 SHEETS
 22-144 200 SHEETS



| <u>NAME</u> | <u>Representing</u> | <u>STATE</u> |
|---------------------------------------|--|----------------------------------|
| Robert Fotheringham Vance Campbell | Water Rights | Utah |
| David J. Jensen | | Utah |
| Vern Knapp | Water master | |
| Boyd Hoskins | | Idaho |
| Jeff J. Senior | Round Mt Ranch & Clear Valley Ranch | Idaho Utah |
| Mont Campbell | see. NAF litigation co. & Pilot Rights. | Utah |
| STEVE HOLMGREN | HOLMGREN LAND & LIVESTOCK CO. | ID |
| Larry Thompson | map Int. Co. and others | Utah ID |
| Robert Hope | upper raft River watermaster | Idaho |
| Kerre Oschaak | Arimo Corp. | Idaho |
| Doug Freestone | Arimo Corp | Idaho |
| FRANK HITCHCOCK | IDWR | ID. |
| Ray Jones | Clear Creek Ranch | ID. |
| DAVE SUNDREN | 647 SUNDREN RIGT | UTAH |
| Harold Jones | Malta | Idaho |
| Rudol. Stewart | Stewart Ranch | Bury Idaho |
| D. Jay Harper | Chairman of advisory Comm. 43-B | Malta, Ida |
| Allen Merritt | IDWR | 222 Shoshone St Tur Falls, ID |
| LEE SUN | UTAH WATER RIGHTS. | 83301 |



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)

May 5, 1998

Dave Sundberg
HC 72
Malta ID 83342

Dear Mr. Sundberg:

It has been reported to us that on Saturday, May 2, 1998 the flow of Clear Creek reached 20 cfs and according to the decree the Utah diversions were to be shut off and the water was to go to Idaho. Around 5:00 p.m., when the Utah Clear Creek Commissioner went to make these changes, he found that you had already closed the Utah headgates to send the water to Idaho.

As the Idaho Clear Creek Commissioner, you have certain responsibilities to work with the Utah Clear Creek Commissioner to determine when changes need to be made in the distribution of water between Utah and Idaho in compliance with the court decree. **However, you have no authority to close or open headgates on Clear Creek in Utah!**

If you have concerns about the distribution of water between Utah and Idaho, you must communicate those to the Utah Clear Creek Commissioner and work out a solution with him. Any future attempts on your part to open or close headgates which are being regulated by the Utah Clear Creek Commissioner could jeopardize the cooperative working relationship between Utah and Idaho on Clear Creek.

If you have any questions concerning this letter, please contact Lee Sim, Assistant State Engineer for Adjudication and Distribution, at (801)538-7380 or Bob Fotheringham, Regional Engineer, at (435)752-8755.

Sincerely,

Robert L. Morgan, P.E.
State Engineer

cc: Lee Sim
Bob Fotheringham
Vern Kempton
Tim Luke
Allen Merrit



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 12, 1998

Robert L. Morgan, PE
State of Utah
Department of Natural Resources
Division of Water Rights
Box 146300
Salt Lake City, UT 84114-6300

RE: Clear Creek Regulation

Dear Bob:

Your letter of May 5th, 1998, to Dave Sundberg and the events of the previous weekend that prompted your letter demonstrate that both the commissioner in Utah and the watermaster in Idaho need further guidance from our agencies. They need further guidance to communicate and act in a more structured and timely manner to turn the water according to the 1937 Judge Johnson Decree. With such direction, the recent situation may be prevented from reoccurring.

I propose that our agencies jointly adopt a written protocol for the commissioner and watermaster to follow. A first cut at a protocol follows:

- At the request of either the commissioner or the watermaster, two daily meetings shall commence to be held to determine the daily average flow of Clear Creek &/or volumes delivered for use in turning the waters of Clear Creek between Utah and Idaho according to the 1937 Johnson Decree.
- Once called the commissioner and the watermaster shall meet daily at 7:00 am and 7:00 pm at the gage in Utah to determine the daily average flow of Clear Creek.
- Said meetings shall continue daily unless both the commissioner and the watermaster agree the meeting can either be skipped with date agreed for continuation or discontinued until the following season.
- Representatives may be appointed by either the commissioner or watermaster to attend said meeting.
- For the purpose of regulation the average daily flow shall mean the average of the 7:00 am and the 7:00 pm flow rate of the same day.
- Once the average daily flow as determined above meet the criteria as dictated in the 1937 Johnson Decree; changes to the headgates in Utah by the commissioner and changes to headgates in Idaho shall be made within 12 hours.

-If disputes develop between the commissioner and the watermaster then the respective state agencies will be immediately informed. Once informed the agencies shall confer within a reasonable time and give further direction to the watermaster and commissioner.

Please review this draft protocol and provide comment at your earliest opportunity so that guidelines may be in place this season. If you have another approach we will be willing to work with you.

We may also need to help the Clear Creek waterusers out with improving their gaging station in Utah. I understand personnel from our agencies have recently met and are working on this matter.

Please let me know your thoughts.

Sincerely,

Norm Young by *A. Merritt*

Norm Young, PE
Water Management Division Administrator

cc: Pat Brown
Roger Ling

Bob Fotheringham
Lee Sim

Dave Sundberg ✓
Allen Merritt



State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

June 1, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

LEE H SIM PE-ASST STATE ENG
DEPT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS
1636 WEST NORTH TEMPLE
SALT LAKE CITY UT 84116-3156

✓ DAVE SUNDBERG
PO BOX 1
MALTA ID 83342

RE: Clear Creek Regulation-Idaho/Utah

Gentlemen:

As a follow-up to Norm Young's May 12, 1998 letter to Robert Morgan, a meeting involving the Water Commissioner, Agencies and Watermaster has been scheduled for 10:00 a.m. on Thursday-June 18, 1998 at the Raft River Rural Electric Conference Room in Malta, Idaho.

If you have any questions or if you need additional information, please feel free to contact me.

Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB

cc: Norm Young



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 8, 1998

Bob Fotheringham
Utah Division of Water Rights
1780 North Research Parkway # 104
Logan, UT 84341

Dear Bob:

I enjoyed visiting with you and other staff members last month to inspect the old USGS gaging station on Clear Creek in Utah. During that visit I believe we agreed that this site could not be equipped with a recording device without a significant amount of rehabilitation work. I believe we agreed that neither state would pursue such work in the near future.

I think both you and I also had concerns about using the slide-in wooden weir at the diversion structure below the old gage. Specifically, the sediment island upstream of the weir appears to pose problems with the weir pool and approach velocities. The condition of the weir itself may also be a concern. I think there is also general agreement that establishing some method of measuring Clear Creek flows at or near the old gage site is important in order to be consistent with the Johnson decree. You mentioned that flows have traditionally been determined by measuring the Idaho weir and adding all of the upstream diversions.

As an alternative to rehabilitating the former USGS gage site, using the wooden weir below the old site, or relying on the traditional method of summing the Idaho weir with the Utah diversions, we discussed the possibility of rating the creek at a cross-section immediately above the Dave Sundberg diversion, next to the Scofield house. I feel this section may be suitable for the following reasons:

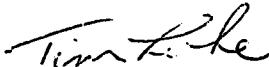
- 1) the former bridge abutment provides a good control section for current metering,
- 2) measuring at this site would reduce the need to measure the Sundberg diversion and the two diversions at the wooden weir in order to determine the total stream flow,
- 3) a staff gage can be installed on the bridge abutment,
- 4) metering can be done from a bridge plank that is placed across the abutment, which may be safer than wading the stream at other points.

We also discussed that a rating at this section might be completed over a fairly narrow range of flows, perhaps from about 12 cfs to 30 cfs. This would insure a rating for the flows that are of concern in the decree, i.e.; the 17 and 20 cfs rates which determine when water is split between the two states. However, it may be advantageous for users in both states if a rating is developed for a broader range of flows.

I would like to propose that representatives from both states work this summer towards developing a rating on Clear Creek for the location described above. IDWR is willing to provide one field agent to conduct or assist in current meter measurements at the site. Given the level of trust and concerns about authority to enter private lands, a Utah representative will need to be involved at all times. IDWR is also willing to prepare an initial rating table using these measurements, again, with the cooperation of your agency. The number of measurements made this year may depend on our respective schedules as well as stream flow conditions. I would suggest that we try to make four to five measurements this year.

I understand that there will be a meeting between representatives of Idaho and Utah on June 18. Perhaps this matter can be discussed in greater detail at that time. I would be happy to talk with you prior to the meeting on June 18. You may contact me at 208-327-7864, or e-mail me at tluke@idwr.state.us.id.

Sincerely,



Tim Luke

cc: Dave Sundberg, Watermaster, Upper Raft River
Norm Young, IDWR
Allen Merrit, IDWR
Lee Sim, Utah Water Rights Division



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 black ink, appearing to read 'Tim Luke', written over a horizontal line.

Tim Luke

cc: Allen Merritt, IDWR
Norm Young, IDWR



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
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Salt Lake City, Utah 84114-6300
801-538-7240
801-538-7467 (Fax)

June 23, 1998

TO THE WATER USERS OF CLEAR CREEK

There has been concern expressed lately that some water users disregard instructions from the river commissioner or change the diversion regulation set by the river commissioner.

The commissioner on Clear Creek is appointed each year by the State Engineer in accordance with Section 73-5-1 of the Utah, Code Annotated, 1953, as amended. Sections 73-1-14 and 73-5-3 of the code set forth the duties and authority of the commissioner. They state in part:

The river commissioner "shall divide, or cause to be divided, the water ... among the several appropriators entitled thereto in accordance with the right of each respectively, and shall regulate and control, or cause to be controlled, the use of such water by closing or partial closing of the headgates, ... or other controlling works of any ditch, canal, ... or other means of diversion as will prevent the waste of water or its use in excess of the quantity to which any appropriator is lawfully entitled"

The river commissioner "may attach to such controlling works a written notice, properly dated and signed, setting forth that such controlling works have been properly regulated and are wholly under his control, and such notice shall be a legal notice as to the facts therein contained to all parties interested in the division and distribution of the water"

"Any person, who in any way unlawfully interferes with, injures or destroys or removes any dam, head gate, weir, or other appliance for the diversion, apportionment, measurement or regulation of water, or who interferes with any person authorized to apportion water while in the discharging of his duties, is guilty of a misdemeanor, and is also liable in damages to any person injured by such unlawful act."

As stated in the statute quoted above, the commissioner on Clear Creek is responsible to divide the water among the water users according to the water rights of record. In fulfilling this responsibility, he is authorized to change and set headgates (or other methods of controlling diversions) or to instruct water users to change and set headgates (or other methods of controlling diversions) to assure an equitable distribution of water. If necessary, he may lock and place a tag on or near diversion dams or headgates indicating they are being regulated under the direction of the State Engineer. **Anyone who tampers with or changes diversion dams or headgates or other**

Clear Creek Water Users

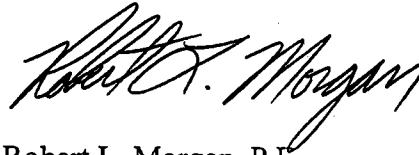
Page two

methods of controlling diversions which are under regulation becomes liable for prosecution under the state statutes.

Cooperation among water users and with the river commissioner is always important to the distribution of water, but it is especially important during dry years. I am asking that the water users cooperate with each other and with the commissioner. I would hope that it would not be necessary to go beyond the request of this letter. If the water users continue to adjust the commissioners regulation, a measuring device and control structure notice may be issued requiring the construction of substantial control devices that can be locked by the commissioner.

If you have any questions concerning this letter, please contact Bob Fotheringham, Regional Engineer, at (435)752-8755 or Lee Sim, Assistant State Engineer for Distribution, at (801)538-7380.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Morgan". The signature is fluid and cursive, with the first name "Robert" and last name "Morgan" clearly distinguishable.

Robert L. Morgan, P.E.
State Engineer

cc: Lee Sim
Bob Fotheringham
Vern Kempton

TO: ALLEN MERRITT
FROM: FRANK HITCHCOCK
DATE: MAY 22, 1996
RE: MEETING AT NAF STORE WITH CLEAR CREEK USERS AND UTAH AGENCIES.

As you asked me to last Friday, May 17, I went to the Naf Store to represent the region in a meeting of the Utah regulatory agencies and Clear Creek water users as a result of the Snake River Basin Adjudication Court Order in CASE NO. 92-00014 ORDER PROVIDING FOR PRELIMINARY INJUNCTIVE RELIEF.

There wasn't any attempt to have the people attending sign a sheet or introduce anyone so I will simply identify speakers as I can in the following text. I did introduce myself to each person and I got business cards from two of the three Utah agency staff people.

The discussion began with the Utah Water Resources representative asking what the issue is in view of the judge's order. The response was along the lines of how the water is diverted in Utah. He got a consensus of sorts and then began to review the facts of the water diversions in Utah as he understood them.

The by-laws of the Naf Irrigation Company were cited as stating that the Clear Creek water is to be measured at "the stage crossing". This is circa 1912. The son of Guy Sundberg quoted from a three ring binder throughout the meeting that appeared to have a number of documents in it. He is a shareholder on Clear Creek in Utah.

It was difficult to follow the citations from the decrees quoted by different parties because they cite the judge's name rather than the plaintiff and the defendant.

It was stated that the POD isn't listed in the 1901 decree but is considered to be on the north side of the section 36 section line. This statement led to a general set of comments regarding the portions of the creek to be distributed between the users.

Statements were made by Steve Holmgren and Sundberg about the number of days available and due to Utah and Idaho users. There was discussion about the shares in Naf Irrigation Company and who has what percent.

As a result of this turn in the discussion there was mention of three CFS loss in the creek. Comments began on this issue and the first one was to cite the Company by-laws regarding turning any water that goes below the lane in the amount of 6 cfs. Holmgren said that he gets billed for water but none reaches his property.

Then there was discussion about where the Clear Creek water is to

9 be measured for the Idaho turn. The statement was made that the Idaho Weir located one half mile north of the border is the place where the measurement is to be taken. The weir was described as being 10 feet across the main channel and that 560 acre feet is the total to be turned.

10 Tim Luke commented that there is no water district or watermaster in Idaho and that as a result no one is authorized to distribute in Idaho. Holmgren said that he had been on his ground since 1948 and the same ditch rider had always delivered his Clear Creek right and there had been no difficulty.

11 The Utah Deputy AG said that in his conversations with the lawyers for the parties identified in the order that he could identify an issue that appeared to be where is the POD? Where is it to be measured? He felt that a side issue was the distribution of the water between Utah and Idaho.

12 Laverne Kempton, the Utah watermaster, discussed the original USGS gauge location versus where the measurement is taken now. No data was taken (measured) at that point until last year. He described the weir as a 10 foot Cippoletti concrete weir. Sundgren stated that the problem is was there a measurement taken last year at that point?

13 Sundgren said that he understood that if the flow was over 20 cfs it was to go to Idaho. Kempton said that Allen Merritt observed the weir and said that he saw no problem and that (it) could be taken a little lower. Sundgren said that there needed to be a record. That is, a physical record like a recorder would make.

14 The Utah WR rep said a permanent device like a continuous recorder could be set up but the critical issue is the cost which he thought would be approximately \$1300. He felt that this would eliminate the biggest question. Holmgren commented that he thought that the site of the original recorder was washed out in 1983 or so when they had approximately 137 CFS came down. Kempton said that there is enough water right now that he has been splitting the rights.

15 The expense could be shared amongst the users was the opinion of the Utah rep. Maybe they could split the cost along the lines of the split in the water use stated to be 57% lower users and 43% upper users. He thought that he had seen USGS figures of \$8,000 per measuring station. Time Luke suggested that in Idaho they are sometimes able to get matching funds.

16 Kempton said that the PODs are historically at the same points and that Guy Sundberg always measured "down there" which he clarified to be the six foot weir at the "stage crossing". In the last several years measurement was up above. There is no boundary at

the section 36 line the Jensen house or is it Mont Campbell's shop.

17 Then there was a shift to the amount of water used as cited in the decree by Judge Christiansen. The quote was at item #6 of the decree that the amount was awarded to Naf Irrigation Company. The first 2.66 CFS went to John Naf in Idaho. The comment was mad that it is this right that Harold Jones wants to take in Idaho. Is this a Utah water right ieven if the POU is in Idaho? The question was raised as to the POU specified in Idaho? The POD is still in Utah.

18 The statement was made that this usage was made by Ward's house or the birch tree. Also, that this is where Ray Jones water is delivered or the Naf Irrigation Company water. Jones want to escape the by-laws and measure "down here". Kempton said he is to turn 57% to Idaho and that is what he measures to individual users and the company.

19 The problem was then stated to be when the water is used up the creek in the spring and none is available to Idaho. The company by-laws don't say where to measure. What about the 3 CFS loss?

20 Tim Luke asked if all users weren't sharing in the loss of the 3 CFS. The users (?) don't want to take the loss. The Jones share is taken there (?) the rest of the company water is up there (?).

21 The Utah State Engineer's Office rep said that Utah doesn't dictate how delivery companies control their internal affairs. Despite the judge's order they would only abide by the order if it makes sense. They are trying to figure out how best to approach the order since they have a phone conference with the Idaho people and Allen Merritt on Thursday in the morning.

22 He went on to say that in the Commissioner's report at #2 (?) Clear Creek is to be measured at Mont's shop. The parties agreed at some point in the most recent court schedule that 9 CFS is the amount to be measured (?). It is in the order that the parties agreed on turns. I asked him to cite the passage he was quoting. He said it was at page three, paragraph two. Sundberg said that there was no discussion of measurement and that the Utah diversions should have measurement devices.

23 The issue was framed again as being where the Jones water is measured. Nine CFS at Mont's shop the same as doing it at the section line of 36. That hasn't happened yet but maybe it will bey July of this season. Utah dosn't have to follow the terms of the order and perhaps Jones would have to go to court in Utah. The feeling of the Utah agency reps is that the Naf Irrigation Company water can be delivered at any point.

In their adjudication of the Utah rights as reviewed and

24 recommended they can take the water at any point and its the company's call as to when. I asked them to identify the year and the date of the decree. Its 1965. Its called the West Box Elder Adjudication. The Snake River Division. Points of diversion were identified in the proposed report but its never been decreed.

25 Does the distribution interfere with Idaho users? In Utah, the commissioner (watermaster?) would still take direction from the company.

26 Tim Luke said that he would want records of the Idaho deliveris and the minutes of the annual meetings of the company. The Idaho decree allows for election of a watermaster. Clear Creek is turned on the 12th to Idaho.

27 Kempton called the Arimo right holder. He said that he isn't responsible for delivery of water when there isn't any ability for the water to get there. He said that no Clear Creek water can go by the Holmgren Land and Livestock ground. No water can reach the Arimo lands without going through H.L. & L. meadows.

28 The Utah rep said that Utah does share a commissioner with Wyoming and Colorado and that these matters are taken care of at an annual meeting.

29 Tim Luke said that there is no authority to deliver Jones water. He said that reading between the lines of what he was hearing thus far he felt that there were other problems of delivery as well. He said that Idaho wasn't concerned with Naf deliveries. However, he would recommend that an Idaho water district be activated to give structure and responsibility for the usages.

30 Holmgren said that his neighbor Reid Stewart would have to have the means to divert the Clear Creek water in order to recieve his right. Stewart replied that a measuring device had been set up for him. He said that the device hasn't been washed out and that it is functional.

31 A description of the Clear Creek channel as it passes through H.L. & L. lands was was given as a combination of sloughs, etc in Steve Holmgren's fields so that no one can tell where the water is without going up there. If there was an Idaho commissioner could that person turn the water through the measuring gauge.

32 Holmgren said that the only way the water can get to Stewart's ground is by subing off the H.L. & L. meadows. Kempton said that there is no way that water could get to the Stewart weir and he had been to the site this season.

33 The Utah State Engineer's rep said that he questioned the need for a commissioner in Utah as there didn't appear to be any issues in Utah or in the Naf Irrigation Company. The Utah water resources rep said that it felt to him that there was a basic distrust of the reading of the gauge.

35 Stewart said that when Guy Sundberg was delivering water he always got his water. Sundberg said that the issue is the measurement of the water at the "stage crossing" versus where the measurement is actually being taken. He didn't think that the watermaster had turned the water in the last few years into the ditch above the Idaho weir.

36 Kempton asked for someone to tell him how to make the correct split of water from the Idaho weir to the two ditches that serve Jones and Sessions. There was discussion about the waste water that comes in above the ditch that both parties have a right in plus H. L. & L..

37 Kempton asked how Sessions can irrigate out of this ditch that also serves other yet he wants more water represented by the return flow off his field. Tim Luke asked if Sessions had a separate waste water right filed. If not then the water is again to all the users of the ditch as a benefit. Kempton went on to say that he has a measuring weir to take readings where the ditches separate.

38 Holmgren said that H. L. & L. fills a pond then Sessions takes from the pond which is measured at the side of the road as a separate measurement.

39 Kempton said that guys who have complaints don't come to see him.

40 The Utah State Engineer's rep said that they would recognize the judge's request but that the users of the water should make the request. He said that the person turning the water should be elected by everybody on the creek. Kempton said that this is all in the minutes of the meeting. The distribution is informal.

41 Tim Luke suggested that a protocol should be developed to address present concerns. The comment was made that the situation didn't require two watermasters.

42 The store owner, Hoskins, said that last year everything had washed out down at Reid Stewart's place. Stewart asked why the former person delivering the water could get the water down to his place it couldn't be done now? The Utah water resources rep said that if there wasn't a headgate then there is no responsibility for the person turning the water to get it there.

43 Tim Luke said that anybody controlling Idaho headgates isn't formally authorized although the director can appoint someone to do so. To do so would leave a person open to liability. The plaintiff's lawyer has had success in suing the state previously.

44 The meeting broke up at this point and the Utah agency reps, myself and Tim went with Kempton, Stewart, and Sundberg to view the

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diversions in Idaho and Utah. There was a good deal of discussion at each stop between the participants. I took the opportunity to take photos at each diversion to add to the Clear Creek claim files since the water is running strongly through the weirs and ditches.

AL
We returned to the Naf store as a group after 4 pm. I asked the Utah reps if they would provide this office with the adjudication map sheets of the ground along Clear Creek and they promised to do so. I have added to the Clear Creek SRBA map files the exhibits of the map(s) they brought to the meeting which they gave to me as they are partial sheets but do show much of the Utah ground adjacent to the natural channel.