

Hon. James A. Manley
20th Judicial District Court
Lake County Courthouse
106 Fourth Avenue East
Polson, MT 59860

MONTANA TWENTIETH JUDICIAL DISTRICT COURT
SANDERS COUNTY

STEPHANIE and CHRISTOPHER RASH,

Plaintiffs,

vs.

CRAIG A. NEESVIG and SHANA NEESVIG,

Defendants.

CRAIG NEESVIG and SHANA NEESVIG,

Counter Plaintiffs,

vs.

STEPHANIE RASH, CHRISTOPHER RASH,
NEAL RASH, and KEREN RASH,

Counter Defendants.

NEAL RASH and KEREN RASH

Third-Party Counter Plaintiffs,

vs.

CRAIG NEESVIG and SHANA NEESVIG,

Third-Party Counter Defendants.

Cause No. DV-19-91

**ORDER
DENYING NEESVIGS' MOTION TO
VACATE TRIAL DATE, VACATE
TRO OR PRELIMINARY
INJUNCTION, STAY PROCEEDINGS
AND TRANSFER WATER RIGHTS
ISSUES TO DNRC**

ORDER DENYING NEESVIGS' MOTION TO VACATE TRIAL DATE, VACATE
TRO OR PRELIMINARY INJUNCTION, STAY PROCEEDINGS AND TRANSFER
WATER RIGHTS ISSUES TO DNRC

Page 1

Order

The motion is denied.

Rationale

The trial date will not be vacated. All parties continue to pursue non-water-related tort claims. These should be concluded, and final judgment issued so that appellate and administrative proceedings can be completed. It is this Court's understanding the DNRC proceedings may be already stayed because the agency is awaiting completion of this case.

There is no reason this Court is aware of that the DNRC proceedings cannot proceed. This Court has not issued any order that would stay administrative or Water Court proceedings.

The motion to vacate the TRO or Preliminary Injunction is essentially another form of asking for reconsideration. For reasons explained in the Order denying Neesvigs' motion for "relief from Order", a motion for reconsideration is not an allowed motion.

The previous TRO probably should have been clarified as a Preliminary Injunction issued after hearing. The continuing presentation of facts from the several hearings herein convince this Court that the interim injunctive relief was required.

The ongoing acts of the parties make clear that Neal and Karen Rashes' water is being, and will be, interfered with or shut off by Neesvigs in the absence of preliminary injunction. Rashes will suffer significant and irreparable harm by loss of their primary or sole source of domestic water.

Credible evidence to date also indicates Rashes are likely to succeed on their claim to this water, in the ultimate forum. As stated in the order denying Neesvigs' Motion for Summary Judgment:

ORDER DENYING NEESVIGS' MOTION TO VACATE TRIAL DATE, VACATE
TRO OR PRELIMINARY INJUNCTION, STAY PROCEEDINGS AND TRANSFER
WATER RIGHTS ISSUES TO DNRC

"Neesvigs claim the spring is "over-appropriated", based on the factual representations in their DNRC applications, and certain administrative permits or findings based on those representations. This Court has seen and heard credible evidence indicating 1) some of the Rashes' water use was from surface water, and 2) the Rashes and their predecessors used this system for 30 years as their primary or only source of domestic and livestock water (indicating the water source was not already all used up), and 3) historical aerial photographs showed Neesvigs and their predecessors had not used little spring water to the extent of their representations to the DNRC and representations to this Court."

The basis for the Preliminary Injunction is amended to include that finding.

This Court is now even more convinced that the requirements for preliminary injunction have been met, pursuant to MCA 27-19-201(1), (2), and (3). The Preliminary Injunction should remain in effect during the pendency of this case. If final determination of water rights is made in the ultimate forum, then application should be made to this Court to vacate or amend that injunctive protection.

DATED this 27th day of May, 2022.

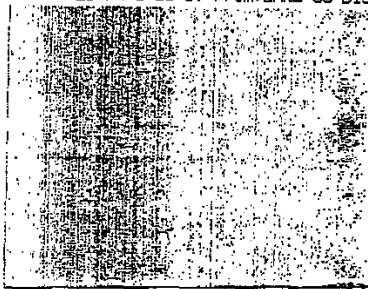
JAMES A. MANLEY

JAMES A. MANLEY
District Court Judge

cc: **Nicole Siefert**, Co-counsel for Plaintiffs and Counter Defendants Stephanie and Christopher Rash
Sarah Simkins, Co-counsel for Plaintiffs and Counter Defendants Stephanie and Christopher Rash
Perry J. Schneider / Rachel H. Parkin, Attorneys for Counter Defendants and Third-Party Counter Plaintiffs Neal Rash and Keren Rash
Robert Terrazas / Dana A. Henkel / Kelcie Peltomaa, Co-counsel for Defendants, Counter Plaintiffs and Third-Party Counter Defendants Craig A. Neesvig and Shana Neesvig
Ross D. Miller, Co-counsel for Defendants, Counter Plaintiffs and Third-Party Counter Defendants Craig A. Neesvig and Shana Neesvig
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05/27/22 cWMc

ORDER DENYING NEESVIGS' MOTION TO VACATE TRIAL DATE, VACATE TRO OR PRELIMINARY INJUNCTION, STAY PROCEEDINGS AND TRANSFER WATER RIGHTS ISSUES TO DNRC

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FILED March 29 20 21

Hon. James A. Manley
20th Judicial District Court
Lake County Courthouse
106 Fourth Avenue East
Polson, MT 59860
(406) 883-7250

Candace Fisher
SANDERS COUNTY CLERK OF DISTRICT COURT
BY W. Smith
DEPUTY

MONTANA TWENTIETH JUDICIAL DISTRICT COURT
SANDERS COUNTY

STEPHANIE RASH and
CHRISTOPHER RASH,

Plaintiffs,

vs.

CRAIG A. NEESVIG and SHANA
NEESVIG,

Defendants.

Cause No. DV-19-91

**TEMPORARY
RESTRAINING ORDER**

CRAIG NEESVIG and SHANA
NEESVIG,

Counter Plaintiffs,

vs.

STEPHANIE RASH, CHRISTOPHER
RASH, NEAL RASH and KEREN
RASH,

Counter Defendants and
Third-Party Defendants.

NEAL RASH and KEREN RASH

Third-Party Counter Plaintiffs,
vs.

CRAIG NEESVIG and SHANA
NEESVIG,

Third-Party Counter Defendants.

The parties filed motions for temporary restraining order and preliminary injunction. These came on for hearing March 23, 2021. On that law and motion day, there were numerous other contested matters. Hearing on preliminary injunction would necessarily include evidence to show “... *it appears the applicant is entitled to the relief demanded...*” in the complaint. MCA 27-19-201. That determination would require evidence of water rights or permits and historical use. The Court informed the parties at the outset the Court would hear the temporary restraining order evidence, and either party could request subsequent hearing on preliminary injunction at a later date.

If either party seeks hearing on preliminary injunction, one will be set. Because of the Court’s calendar that hearing may have to be set so far in the future that it may make more sense to just go to trial on the whole case.

The temporary restraining order hearing was focused on the goals of preserving the peace, maintaining the status quo, and avoiding irreparable harm until further order. MCA 27-19-315 and -316.

A temporary restraining order does prejudice or affect the ultimate determination of the water rights of the parties.

From the evidence presented March 23, 2021, the Court finds:

The status quo refers to the situation at the time this action was filed in 2019.

At time of filing, the Rashes had running water to their property from the "Little Spring". At the time of hearing in 2021, their water flow was periodically interrupted, reduced or discolored.

The Rashes took ownership of property at 43 O'Callahan Lane in Trout Creek, Montana in 2017. That property's only source of running water comes from a water system fed by a natural spring referred to as the "Little Spring", which also provides water for other properties including the Neesvigs' property. There is dispute whether Rashes had water from this spring in 2017, but the credible evidence showed they had such water when this action was filed.

From February 22 through February 26, 2021, the Rashes had no running water to their property. Water was restored to the Rashes' property on February 27, 2021, but the water flow has been significantly reduced, at least periodically, such that the Rashes could not consistently keep water running to their livestock. The water was sometimes brown and murky, unlike in the past. On March 22, 2021, the day before the hearing, water was again stopped or reduced.

Undisputed evidence showed that, on February 22, 2021, Neesvigs caused

significant work and changes to be performed on the water conveyance system, which altered the configuration of the water conveyance from their upper cistern or holding tank to the overflow system. Neesvigs have an upper cistern and holding tank. Previously, there had been one overflow pipe coming out of the upper system. The overflow pipe fed a lower cistern and/or holding tank which was the source of water for the lower/overflow water users (including Rashes and Chenoweth). The lower tank fed a pipe which flowed downhill to a Y-junction, which then divided the water into historical pipes to the Rashes' and Chenoweth properties.

The Neesvig's reconfiguration work caused interruption of the Rashes' water on the day of the work. It would defy common sense to suggest this was a mere coincidence that happened on the same day.

The work was without notice to Rashes.

There is one other way the Rashes' water flow could have been interrupted, without cutting off Chenoweth's water. At the Y-junction, there are ball-valves that can shut off either Rashes' or Chenoweth's water. It is possible that on one or more occasions since this action was filed, someone shut off the valve to the Rashes' line at the Y-junction.

The status quo has been disrupted through the alteration of the overflow water system and/or manipulation of the ball-valve. Issuance of a temporary

restraining order is necessary to maintain the status quo.

Considerable animosity exists between the parties. There are allegations of killing neighbors' livestock and carrying weapons. Tension was apparent in the courtroom. There is potential for violence.

The Rashes will likely suffer immediate and irreparable injury absent a restraining order, by being deprived of regular running water to their home and for their livestock.

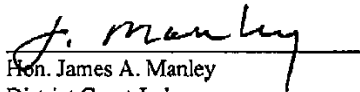
Based upon the above findings, and for good cause, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Neesvigs, their agents, and all others acting in concert with them are restrained and prohibited from making any further modifications, changes, or alterations to the water conveyance system, or manipulation of the ball-valve, which alters their water system characteristics as it existed prior to February 22, 2021, without prior approval of the Court;
2. The Neesvigs, their agents, and all others acting in concert with them are hereby restrained and prohibited from interfering with the flow of water to the Rashes' property; and
3. The Neesvigs, their agents, and all others acting in concert with them are ordered to maintain the water conveyance system, and if necessary restore the configuration, in such a manner that the current water flow to the Rashes' property

is consistent with the water flow to the Rashes' property prior to February 22, 2021.

This Order shall remain in effect until further order of this Court, or another court of competent jurisdiction.

DATED this 29th day of March, 2021.


Hon. James A. Manley
District Court Judge

3/29/21 *ms*
c: Robert Terrazas/Terrazas Henkel, PC -via email
Quentin Rhoades/Nicole Siefert/Rhoades Siefert & Erickson, PLLC -via email
Sarah Simkins/Johnson Berg & Saxby, PLLP -via USPS
Perry J. Schneider/Rachel H. Parkin/Milodragovich, Dale & Steinbrenner, -via email
PC

The following Appendix document is an excerpt from District Court CR 320 at Exhibit 159. The full exhibit can be found at CR 320, pgs 26-30.

Hon. James A. Manley
20th Judicial District Court
Lake County Courthouse
106 Fourth Avenue East
Polson, MT 59860
(406) 883-7250

MONTANA TWENTIETH JUDICIAL DISTRICT COURT
SANDERS COUNTY

STEPHANIE RASH and
CHRISTOPHER RASH,

Plaintiffs,

vs.

CRAIG A. NEESVIG and SHANA
NEESVIG,

Defendants.

Cause No. DV-19-91

***TEMPORARY
RESTRAINING ORDER***

CRAIG NEESVIG and SHANA
NEESVIG,

Counter Plaintiffs,

vs.

STEPHANIE RASH, CHRISTOPHER
RASH, NEAL RASH and KEREN
RASH,

Counter Defendants and
Third-Party Defendants.

NEAL RASH and KEREN RASH Third-Party Counter Plaintiffs, vs. CRAIG NEESVIG and SHANA NEESVIG, Third-Party Counter Defendants.
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In consideration of Neal and Keren Rash’s Motion for a Temporary Restraining Order and Supporting Brief, and following a March 23, 2021, hearing at which time testimony was heard from Neal Rash, and the Neesvigs’ water rights expert Roger Noble, the Court finds:

Neal and Keren Rash (the “Rashes”) took ownership of property at 43 O’Callahan Lane in Trout Creek, Montana in 2017. Their property’s only source of running water comes from a water system fed by a natural spring referred to as the “Little Spring”, which also serves several other properties including Craig and Shana Neesvig’s (the “Neesvigs”) property.

From February 22 through February 26, 2021, the Rashes had no running water to their property. Water was finally restored to the Rashes’ property on February 27, 2021, but the water flow has been significantly lessened, such that the Rashes cannot keep water running to the livestock anymore. Also, the water was brown and murky. On March 22, 2021, water again stopped flowing to the Rashes’ property, with a small flow resuming on March 23, 2021.

Despite the pending litigation related to water source and conveyance, on or before February 22, 2021 and without notice to the Rashes, the Neesvigs caused significant work to be performed on the water conveyance system which altered configuration of the water conveyance system that has been in place for over 30 years, impacted downstream flows and overflow, and deprived the Rashes of water that has historically served their property for domestic and livestock purposes.

Based upon these findings, the Court further finds:

The status quo has been disrupted through the alteration of the water system necessitating the issuance of a temporary restraining order to ensure the status quo is maintained throughout the course of this litigation, and no further evidence is altered or destroyed through alterations to the water conveyance system;

A degree of animosity has arisen between the parties necessitating the issuance of a temporary restraining order to maintain the peace between the parties during the course of this litigation, which is critical given the allegations of potential violence; and

The Rashes have been denied the use of water that has historically been available for their residential use and to water their livestock necessitating the issuance of a temporary restraining order to prevent irreparable injury to the Rashes because, absent such relief, the Rashes have been and will continue to be deprived of running water to their home and for their livestock, and would thereby

sustain immediate and irreversible injury.

Based upon the above-stated findings, and for good cause, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Neesvigs, their attorneys, and all others acting in concert with them or as agents of them, are hereby restrained and prohibited from making any further modifications, changes, or alterations to the water conveyance system which alter its characteristics in existence prior to February 22, 2021;

2. The Neesvigs, their attorneys, and all others acting in concert with them or as agents of them, are hereby restrained and prohibited from interfering with the flow of water to the Rashes' property; and

3. The Neesvigs, their attorneys, and all others acting in concert with them or as agents of them, are hereby ordered to maintain the water conveyance system in such a manner that the current water flow to the Rashes' property is consistent with the water flow to the Rashes' property prior to February 22, 2021.

This Order shall remain in effect until inspection of the Little Spring and the water conveyance system has been made by all parties and their experts, and until the matter can be heard by this Court and a determination can be made as to the respective rights of the parties and whether this Temporary Restraining Order should be made permanent.

DATED this ____ day of March, 2021.

Hon. James A. Manley
District Court Judge

c: Robert Terrazas/Terrazas Henkel, PC
Quentin Rhoades/Nicole Siefert/Rhoades Siefert & Erickson, PLLC
Sarah Simkins/Johnson Berg & Saxby, PLLP
Perry J. Schneider/Rachel H. Parkin/Milodragovich, Dale & Steinbrenner,
PC

The following Appendix document is an excerpt from District Court CR 320 at Exhibit 163. The full exhibit can be found at CR 320, pgs 79-109.

HON. JAMES A. MANLEY
20th Judicial District Court
Lake County Courthouse
106 Fourth Avenue
East Polson, MT 59860
(406) 883-7250

MONTANA TWENTIETH JUDICIAL DISTRICT COURT
SANDERS COUNTY

STEPHANIE RASH and
CHRISTOPHER RASH,

Plaintiffs,

vs.

CRAIG A. NEESVIG and SHANA
NEESVIG,

Defendants.

Cause No. DV-19-91

**TEMPORARY RESTRAINING
ORDER
and
ORDER TO APPEAR
AND SHOW CAUSE**

CRAIG NEESVIG and SHANA
NEESVIG,

Counter Plaintiffs,

vs.

STEPHANIE RASH, CHRISTOPHER
RASH, NEAL RASH and KEREN
RASH,

Counter Defendants and
Third-Party Defendants.

NEAL RASH and KEREN RASH

Third-Party Counter Plaintiffs,
vs.

CRAIG NEESVIG and SHANA
NEESVIG,

Third-Party Counter Defendants.

Upon motion of Counter-Defendants Neal and Keren Rash for Temporary Restraining Order and Preliminary Injunction, the Court finds that a Temporary Restraining Order should be issued without notice to the adverse party under MONT. CODE ANN. §§ 27-19-314, 316. There is risk of immediate and irreparable injury to Counter-Defendants.

Accordingly, for the reasons set forth in the motion and supporting documentation, IT IS HEREBY ORDERED:

1. The application for Temporary Restraining Order is GRANTED.
As of this ____ day of _____, 2021, at ____ o'clock __.m.;
2. The Neesvigs are enjoined from interfering with the flow of water from the Little Spring to the Rash Property, the obstruction of which will cause ongoing nuisance and irreparable harm by depriving Rash of running and potable water to the Rash Property, essentially rendering it uninhabitable.
3. The Court enjoins the Neesvigs from interfering with the Rashes

right to access the Little Spring overflow, the obstruction of which will prevent the Rashes from repairing any damage to the water system and which will also cause ongoing nuisance and irreparable harm by depriving Rashes of running and potable water to the Rash Property, essentially rendering it uninhabitable.

4. Pursuant to § 27-19-201, the requested injunctive relief is proper to protect the status quo until such time as this matter has been determined on the merits. Moreover, the immediate harm inflicted on the Rashes by a deprivation of their water necessitates a temporary restraining order pursuant to § 27-19-314.

5. This Order shall be immediately filed in the clerk's office and entered in the record; and

6. The parties shall appear before this Court on the ____ day of _____, 2021, at _____ o'clock, ____m., Sanders County Courthouse, Thompson Falls, Montana, then and there to show cause why a preliminary injunction should not issue.

SO ORDERED this ____ day of _____, 2021.

HON. James Manley, District Court Judge

cc: Nicole L. Siefert; Quentin M. Rhoades; Sarah Simpkins; Robert Terrazas