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Department of Water Resources

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA Case No. 39576	)	ORDER ON
	)	JOINT MOTION FOR
SUBCASE NO. 43-10356	)	INTERIM ADMINISTRATION

On December 3rd, 2002 the Objectors, Nolan K. Branch, Rodney Hall, Roscoe Ward and Olene Warr filed a JOINT MOTION FOR INTERIM ADMINISTRATIVE ORDER. The Claimants, William D. Jones and Son, filed an Objection to the Joint Motion on January 9th, 2003. The Objection offered no supporting Facts, Documents or Arguments. The Court, having reviewed all of the Arguments and Documents which accompanied the Joint Motion hereby orders as follows;

FINDINGS OF FACT

1. During the irrigation season of 2001 and 2002 William D. Jones and Son dammed the water at the Junction of Almo Creek and Raft River, installed a pump and pumped the water into a sprinkler system without a legal point of diversion where the dam and pump were installed. The

natural channel of Almo Creek was being used as a reservoir which stored the water for several days between pumping.

2. Joneses do not have any permit to use this stream channel as a reservoir.

3. On January 24th, 2002 Joneses were ordered by Idaho Department of Water Resources to cease the use of the pump and to not divert water from that point of diversion.

4. Joneses continued to pump water from the reservoir which they had created in the channel of Almo Creek. Joneses's Attorney, Roger Ling, told them to cease using the natural channel of Almo Creek as a conveyance structure.

5. Joneses continued to pump from the reservoir which they created in the channel of Almo Creek until July 6th, 2002.

6. Idaho Department of Water Resources have told Joneses to limit their irrigation to the acres irrigated in 1987. However, Joneses irrigated new ground which is not listed in their place of use which was recommended by IDWR.

7. The water which is being pumped by Joneses is a natural Tributary to Raft River and is not connected to the Almo Creek water which is Decreed to water District 43-D, and does not affect any water rights in District 43-D. The water springs up around the recommended point of diversion North of the natural channel of Almo Creek.

8. Certain quantities of water from Almo Creek have been decreed to specific parcels of land and set apart as a separate water district which is Water District 43-D. The water claimed by Joneses in Claim No. 43-10356 is not included in Water District 43-D and does not affect the

water users in District 43-D.

9. Paragraph XVI of the Jobe Adams Decree specifies that water which arises adjacent to Raft River constitutes the water supply of said Raft River.

10. The ground which is being irrigated by Claim No. 43-10356 lies adjacent to Raft River.

11. Joneses are still maintaining a dam at their recommended point of diversion which impounds the water and prevents it from running to Raft River. Joneses have no permit to impound water during the non irrigation season. If the earthen dam is removed the water will go to Raft River and help Raft River reach the diversion points of the Objector's 1871 Water Rights.

12. The Pump which Joneses have installed at the junction of Almo Creek and Raft River is capable of pumping water from Raft River when Raft River is flowing sufficiently to raise the level of the water.

CONCLUSIONS OF LAW

1. On January 24th, 2002 Joneses were ordered to cease the use of the pump at the mouth of Almo Creek.

2. William D. Jones and Son do not have a legal permit to use the channel of Almo Creek as a storage facility.

3. Idaho Code 42-604 states that a "stream may be divided into two (2) or more water districts, irrespective of the distance between the extreme points of diversion, where the use of the

waters of such stream by appropriators in one district does not affect or conflict with the use of the waters of such stream by appropriators outside such district". Almo Creek is decreed to an area near Almo and the Jones property is a considerable distance below the area where Almo Creek is decreed to be used.

4. The water being claimed in Claim No. 43-10356 is a Tributary to Raft River and does not affect the water rights which are decreed to Almo Creek Water District 43-D, therefore, Claim No. 43-10356 should be administered by Raft River Water District 43-B.

5. William D. Jones and Son have no right to impound water behind their earthen dam outside of the irrigation season.

6. Joneses have no right to irrigate ground under Claim No. 43-10356 which is not listed in their recommended Place of use for that claim.

7. The Department of Water Resources inadvertently recommended Claim No. 43-10356 as part of Water District 43-D, overlooking the fact that the water claimed does not contribute to or otherwise affect the waters which are decreed to District 43-D, but is in fact a tributary to Raft River Water District 43-B.

8. Idaho Code 18-4302 prohibits running water down a dry channel and not letting it go to the original channel of Raft River when other users need the water for irrigation.

ORDER

It is therefore ordered, adjudged and decreed that the Court will issue an Interim Administrative Order as follows:

1. That for the year 2003 Claim No. 43-10356 will be administered by Water District 43-B as a Tributary to Raft River and will be subject to the Senior Water Rights on Raft River.

2. William D. Jones and Son are enjoined from using the pump at the Junction of Almo Creek and Raft River.

3. William D. Jones and Son will immediately remove the earthen dam and allow the water to run to Raft River until such time as Senior Water Rights on Raft River are satisfied and water is available to be used by Joneses.

4. That Joneses will not use Claim No. 43-10356 to irrigate any ground which is not in the recommended place of use for that claim.

5. That nothing in this Order will be construed or used as evidence to support or prove the existence or non existence of Claim No. 43-10356.

SIGNED this____day of January, 2003

Judge of the District Court