

LING & ROBINSON
ATTORNEYS AT LAW
RUPERT, IDAHO 83350-0396

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Roger D. Ling, Esq.
LING & ROBINSON
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 1018

Attorneys for Claimant,
William D. Jones and Son

RECEIVED

JUN 1 2002

Department of Water Resources

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

Subcase No. 43-10356

Case No. 39576,

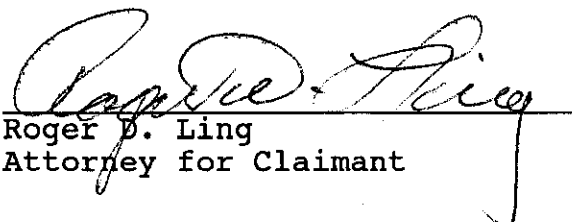
NOTICE OF SERVICE OF DISCOVERY

COMES NOW the Claimant, William D. Jones and Son, by and through its attorney of record, Roger D. Ling of the firm Ling & Robinson, and pursuant to the Idaho Rules of Civil Procedure, hereby notifies the Court and all parties that on the date below stated the original RESPONSES TO ROSCOE WARD'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND LIST OF WITNESSES was forwarded to Roscoe Ward, pro se.

DATED this 17th day of June, 2002.

LING & ROBINSON

By:


Roger D. Ling
Attorney for Claimant

NOTICE OF SERVICE OF DISCOVERY

- 1 -

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of June, 2002, I served the of the foregoing *Notice of Service of Discovery* upon:

Roscoe Ward
P. O. Box 108
Almo, Idaho 83312

Nolan K. Branch
1823 South 2330 East
Malta, Idaho 83342

Clark W. Ward
HC 61, Box 1560
Malta, Idaho 83342

Rodney Hall
P. O. box 631
Malta, Idaho 83342

Warr Brothers
c/o Olene Warr
2231 South, 2350 East
Malta, Idaho 83342

IDWR Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098

Chief, Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

by depositing said document in the United States mail, postage prepaid, in envelopes addressed to said parties/entities at the foregoing addresses.


Roger D. Ling

RECEIVED

JUN 18 2002

Department of Water Resources

Roger D. Ling, Esq.
 LING & ROBINSON
 P. O. Box 396
 Rupert, Idaho 83350
 Telephone (208) 436-4717
 Facsimile (208) 436-6804
 ISB No. 1018

Attorneys for Claimant,
 William D. Jones and Son

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

Subcase No. 43-10356

Case No. 39576,

RESPONSES TO ROSCOE WARD'S
 FIRST REQUESTS FOR
 PRODUCTION OF DOCUMENTS
 AND LIST OF WITNESSES

COMES NOW the Claimant, William D. Jones and Son, by and through its attorney of record, Roger D. Ling of the firm Ling & Robinson, and pursuant to Rule 34(b) of the Idaho Rules of Civil Procedure, responds to Roscoe Ward's First Requests for Production of Documents on claimant, as follows:

REQUEST FOR PRODUCTION NO. 1: Provide clear and accurate copies of all Documents that may be used by Mr. Jones in any hearing or trial of this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

1. Twenty-one (21) photographs of Almo Creek which show the claimant's ditch to his property, the pumping station where water is pumped onto claimant's property, Raft River, and the location

RESPONSES TO ROSCOE WARD'S FIRST REQUESTS FOR
 PRODUCTION OF DOCUMENTS AND LIST OF WITNESSES - 1

where Almo Creek at times flows into Raft River. The original of these photographs can be inspected and copied at your expense at the offices of Roger D. Ling, 615 H Street, Rupert, Idaho.

2. Page 37 of W. E. Johnston v. James Bronson Decree, and pages from The Albion-Idaho Land Company v. Jobe Adams Decree.

3. IDWR GIS aerial photographs showing place of use and point of diversion.

REQUEST FOR PRODUCTION NO. 2: Provide a list of all witnesses and the content of their testimony which might be used by Mr. Jones in any hearing or trial of this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Claimant objects to this request, as it is in the form of an interrogatory, and not a request for production of documents. However, in the interest of judicial economy, a list of witnesses and a brief summary of their testimony is as follows:

1. William Jones - will testify as to the fact that for over sixty (60) years he has participated in the irrigation of the subject property with water from Almo Creek represented by Water Right No. 43-10356.

2. Rodney Jones - will testify that he has for approximately twenty (20) years witnessed the irrigation of land at the place of use of Water Right No. 431-10356, with waters from Almo Creek.

3. Vikie Hancock, claims agent for IDWR - will testify

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3 as to her findings from the inspection of the premises leading to
4 the Recommendation of this water right. Her testimony will include
5 the identification of a man-made ditch used for the diversion of
6 water fromn Almo Creek for the irrigation of the lands of William
7 Jones and Son.

8 4. Jim Sheridan - will testify that the property was
9 irrigated in the 1940's from the existing ditch by gravity
10 irrigation, and that he had helped put up hay grown on the property
11 in the 1940's.

12 5. Curt Durfee - will testify that he helped rake hay
13 in the 1950's on the property being irrigated with this water
14 right.

15 6. Dick Jones - will testify that he saw the property
16 irrigated in the 1940's and 1950's from the existing ditch with
17 water diverted from Almo Creek.

18 7. Jack Erickson - will testify that he saw the
19 property irrigated in the 1940's and 1950's from the existing ditch
20 with water diverted from Almo Creek.

21 8. Craig Simmons - will testify that he irrigated the
22 property in 1993 with water from Almo Creek.

23 9. Bud Ward - will testify that he saw the property
24 irrigated in the 1940's and 1950's.

25 10. Joe Durfee - will testify that he saw the property
26 irrigated in the 1940's and 1950's.

11. Cleon Durfee - will testify that he saw the property irrigated in the 1940's and 1950's.

12. Kent Severe - will testify that he saw the property irrigated in the 1960's.

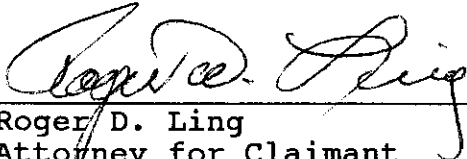
13. Oscar Flores - will testify that he helped install the PTO pump for the irrigation of the subject property in the year 2000.

14. Clark Ward - will testify that he saw the property irrigated from the 1970's to the present.

15. Other witnesses, when discovered, will be identified and this list of witnesses updated.

DATED this 17th day of June, 2002.

LING & ROBINSON

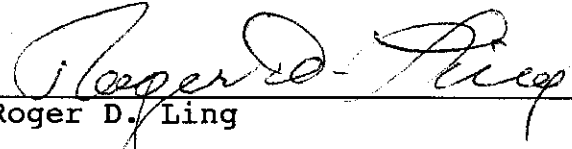
By: 

Roger D. Ling
Attorney for Claimant

STATE OF IDAHO)
County of Minidoka) ss.

Roger D. Ling, being first duly sworn, deposes and says:

That he is one of the attorneys for the claimant in the above entitled action, that he has read the above and foregoing RESPONSES TO ROSCOE WARD'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND LIST OF WITNESSES, knows the contents thereof, and the facts stated he believes to be true.


Roger D. Ling

RESPONSES TO ROSCOE WARD'S FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS AND LIST OF WITNESSES - 4

SUBSCRIBED AND SWORN to before me this 17th day of June, 2002.

(SEAL)

JUDY BARNES
NOTARY PUBLIC
STATE OF IDAHO

Judy Barnes
Notary Public for Idaho
Residing at: Rupert, Idaho
My Commission expires: 02/12/2005

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of June, 2002, I served the of the foregoing *Responses to Roscoe Ward's First Requests for Production of Documents, and List of Witnesses* upon:

ORIGINAL: Roscoe Ward
P. O. Box 108
Almo, Idaho 83312

COPIES: Nolan K. Branch
1823 South 2330 East
Malta, Idaho 83342

Clark W. Ward
HC 61, Box 1560
Malta, Idaho 83342

Rodney Hall
P. O. box 631
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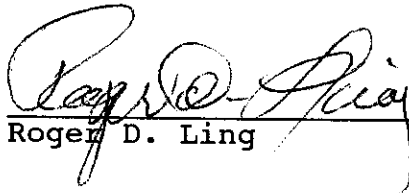
Warr Brothers
c/o Olene Warr
2231 South, 2350 East
Malta, Idaho 83342

IDWR Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098

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3 Chief, Natural Resource Division
4 Office of the Attorney General
5 State of Idaho
6 P.O. Box 44449
7 Boise, Idaho 83711-4449

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9 by depositing said document in the United States mail, postage
10 prepaid, in envelopes addressed to said parties/entities at the
11 foregoing addresses.
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Roger D. Ling

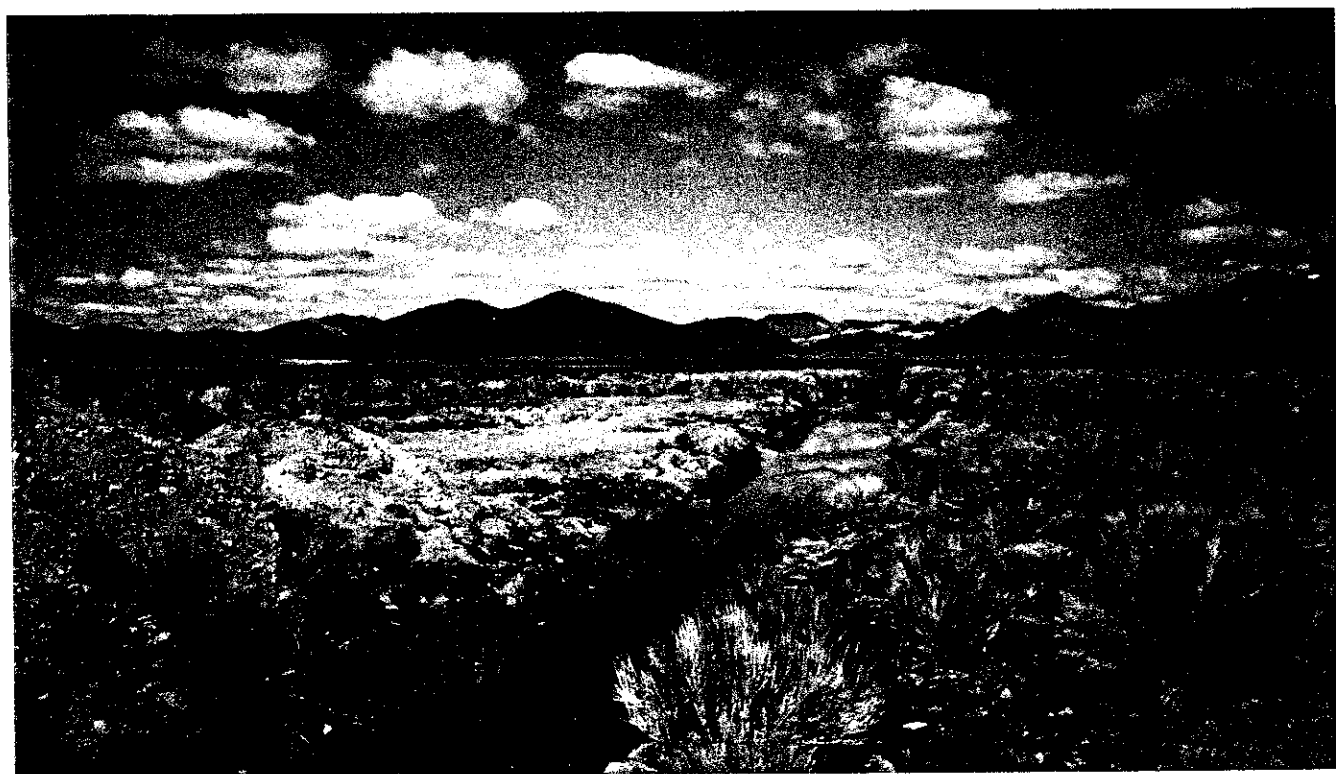
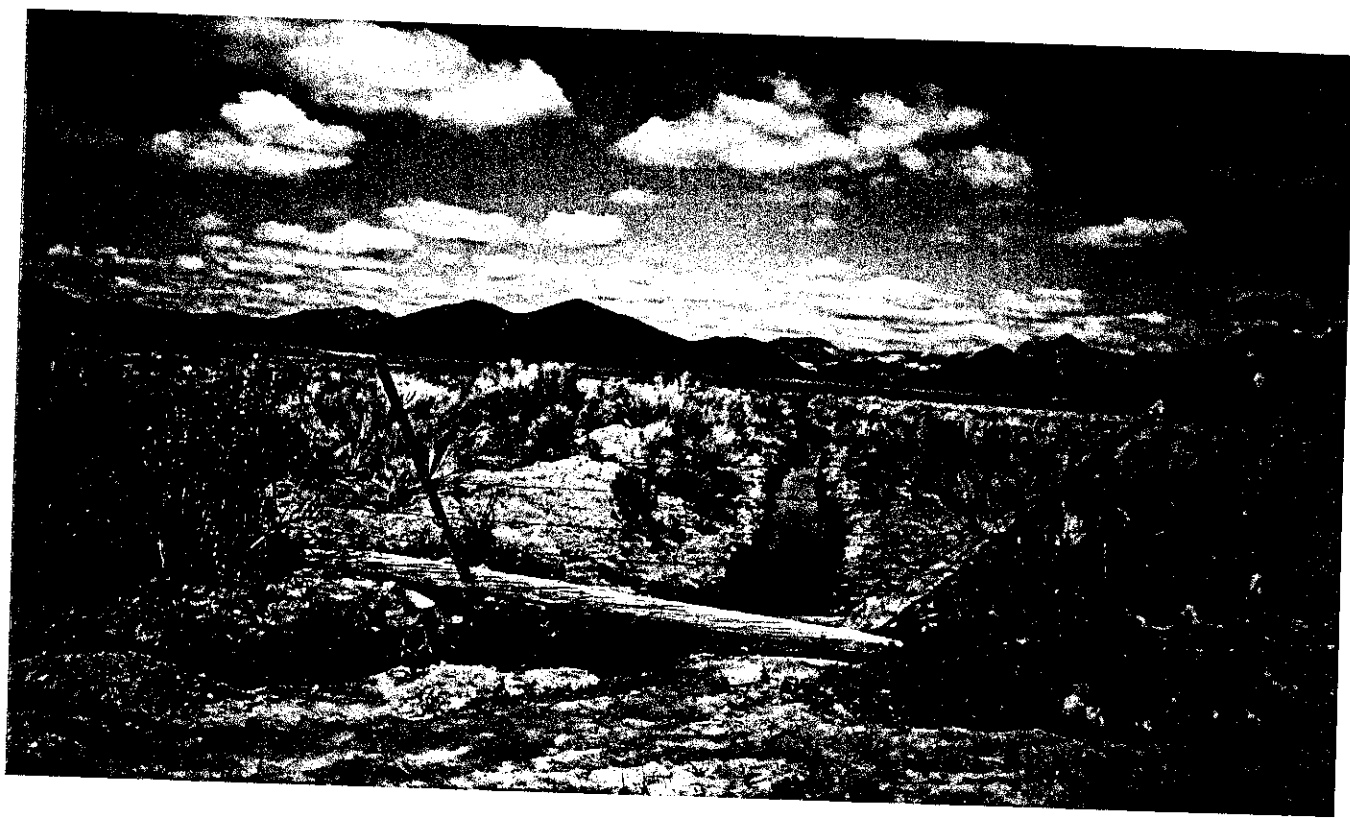
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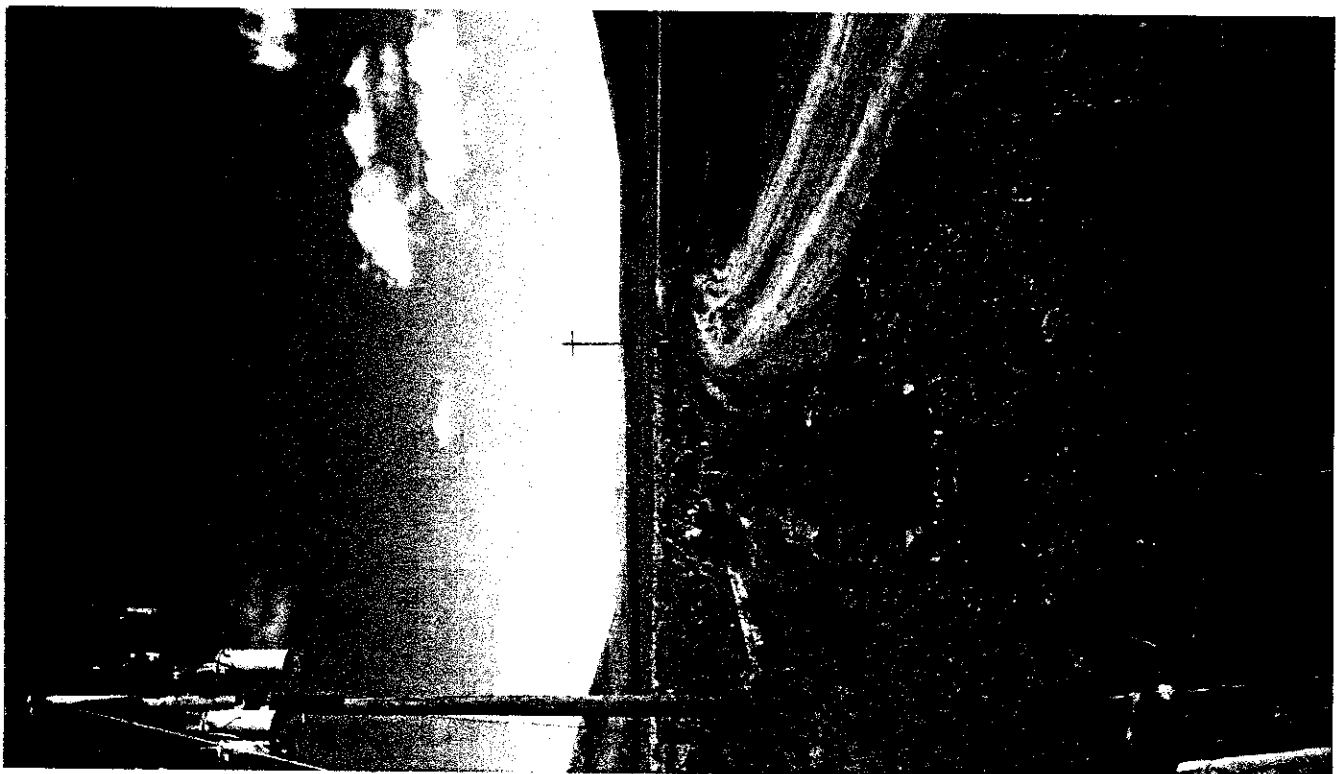
Department of Water Resources























Chas. Van Kirk
1880- Apr. 30

1.3 s.f.

To be diverted from Green Canyon Creek

RECEIVED 5 s.f.

JUN 1 1902

Department of Water Resources

Waters of Antelope Springs, for the irrigation of a tract of land commencing at the NE corner of the Southeast quarter of Sec. 6, Twp. 14, S.R. 25 E.B.M., thence South 14 rods for a place of beginning, thence South 300 rods, thence West 80 rods, thence North 300 rods, thence East 80 rods to place of beginning, except road rights of way.

F.C. Vosburg
1921- June 18

1.4 s.f.

To be diverted from Cassia Creek for the irrigation of $S\frac{1}{2}NE\frac{1}{4}$, $N\frac{1}{2}SE\frac{1}{4}$, Sec. 23, Twp. 13, S.R. 28 E.B.M.

ALMO CREEK

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That Almo Creek and its tributaries, viz, Sythe Creek Edwards Creek, Stine Creek, Blacksmith Fork Creek and Grape Creek, do not contribute to the supply of the water users out of Raft River and its tributaries in the irrigation of the land, and that said Almo Creek hereby is set apart as a separate water district; and that the users of water from Raft River and its tributaries have no interest whatsoever in the use of the waters of Almo Creek and the distribution of the same that the use of the waters of Almo Creek in accordance with the priorities hereinafter decreed, or otherwise shall not be considered as a violation of the injunctive provisions of this decree so far as the users of water from Raft River and its tributaries are concerned.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the various parties hereinafter named be, and hereby are, awarded and decreed for use in the irrigation of their lands, the following and various amounts of water hereby specifically mentioned with the priorities as hereinafter specified and set out for the irrigation of their particular tracts of land hereinafter described, to-wit:

Henry D. Belnap
1879- Apr. 15

1.8 s.f.

To be diverted from South Almo Creek for the irrigation of $SW\frac{1}{4}SE\frac{1}{4}$, Sec. 9, $SE\frac{1}{4}NE\frac{1}{4}$ and $E\frac{1}{2}SE\frac{1}{4}$, Sec. 8, Twp. 15 S.R. 24 E.B.M.

Henry R. Cahoon
1879- Apr. 30

2 s.f.

To be diverted from South Almo Creek for the irrigation of $E\frac{1}{2}NW\frac{1}{4}$, $NW\frac{1}{4}NW\frac{1}{4}$ and $NE\frac{1}{4}SW\frac{1}{4}$, Sec. 22, Twp. 15 S.R. 24 E.B.M.

Ida Jones Cahoon

1880- Apr. 1

1.2 s.f.

To be diverted from North Almo Creek for the irrigation of the following: Beginning at the NE corner of $NW\frac{1}{4}SW\frac{1}{4}$, Sec. 13, thence West 240 rods, thence South 53 rods $5\frac{1}{2}$ feet, thence East 240 rods, thence North 53 rods $5\frac{1}{2}$ feet, to place of beginning; containing 80 acres.

X.

That the defendant, Consolidated Wagon and Machine Company, is a corporation organized and existing under and by virtue of the laws of the State of Utah, with its principal place of business at Salt Lake, Utah.

XI.

That the First National Bank of Brigham City, Utah, is a corporation organized and existing under the laws of Congress relating to banks and banking, having its principal place of business at Brigham City, Utah.

XII.

That the plaintiff, Albion-Idaho Land Company is a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal place of business at San Francisco, California.

XIII.

That this is an action between citizens of different states and that the amount involved herein exceeds the sum of \$3000.00, exclusive of interest and costs.

XIV.

That Raft River is an inter-state stream arising in the Raft River Mountains, having its primary sources in certain springs near Lind, Utah, and near Moulton, Idaho, meandering through the southern part of Cassia County, Idaho, and the northern part of Box Elder County, Utah, and thence flowing in a northerly direction through Cassia County and emptying into the Snake River near Bonanza Bar. That those creeks in Box Elder County, Utah, known as Basin Creek, Mahogany Creek, Johnson Creek, George Creek, Oliver Creek, together with the following named creeks in Cassia County, Idaho, known as Long Creek, Short Creek, Pole Creek, Granite Creek, Cottonwood Creek, Kane Creek, Nibs Creek, Darby Creek, Coe Creek, Meadow Creek, Point Springs, Jim Sage Creek, Stinson Creek, Connor Creek, Green Canyon Creek, Antelope Springs Creek, Warm Springs Creek, North Fork of Cassia Creek, Upper South Fork of Cassia Creek, Lower South Fork of Cassia Creek, Blacksmith Fork Creek, Rock Springs Gulch Creek, Middle Fork of Cassia Creek, Red Rock Creek, Parke Creek, and Cassia Creek, are the tributaries of Raft River, and the waters of said creeks together with the waters of various and divers springs near and along said Cassia Creek and Raft River, contribute, furnish and supply the waters of, and are tributary to, and are in truth and in fact a part of said Raft River.

XV.

That a certain stream commonly known as Clear Creek, which said stream has been separately decreed in an action in this court in the case of Albion-Idaho Land Company vs. Settlers Land & Water Company, et al, at times contributes to the flow of Raft River and that the tributaries of said Clear Creek are West Black Pine or Kelso Creek, Round Mountain Creek and Water Canyon; that a certain creek known as Almo Creek, in its natural state, at times contributes some water to Raft River, but that said Almo Creek and its tributaries, to-wit, Grape Creek, Sythe Creek, Clyde Creek and Edwards Creek, by the terms of the decree of the state court, has been set off as a separate water district, and is separately referred to in this decree, its priorities being specifically mentioned in that portion of the decree having to

do with Almo Creek.

XVI.

That the said tributaries of Raft River above named and set out, subject to the limitations mentioned as to Clear Creek and Almo Creek, together with the waters of certain springs arising in the bed or Raft River and adjacent thereto, constitute the water supply of said Raft River, and that any and all appropriations made and water diverted from said creeks and springs heretofore mentioned constitute an appropriation and diversion from Raft River and serve to deplete the flow thereof and interfere with and diminish the supply of water available for diversion and beneficial application by those parties owning land irrigated from said Raft River by means of diversions made directly from Raft River, and therefore, all diversions made from each, any and all of said tributary streams, with the exception of Almo Creek and the limitation upon Clear Creek, are hereby ordered, adjudged and decreed to be diversions made from the waters of Raft River, and the naming of the streams from which said diversions are made in this decree shall be construed only as fixing the point of diversions, and not as conferring an independent water right from the stream mentioned, but that such water rights shall be deemed a water right from Raft River as of the priority named and inferior only to all priorities on Raft River and superior to junior priorities of said stream.

XVII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the use of the waters of, or to be diverted from Clear Creek, or its tributaries are separate and distinct from and are not inferior and subject to any right herein decreed to the use of the waters of, or to be diverted from Raft River and its said tributaries, and that nothing in this decree contained shall be construed to alter, change or modify the rights of the users of water of or diverted from Clear Creek under the terms of the decree rendered by this court in the case of Albion, Idaho Land Company vs. Settlers Land & Water Company, et al, but that the rights therein granted are hereinafter expressly confirmed.

XVIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That all of the lands mentioned, described and set out in this decree are semi-arid in character and without irrigation are incapable of producing ordinary agricultural crops; that the duty of water for the irrigation of said land is hereby established and fixed at one-fiftieth ($1/50$ th) of a second foot per acre; and that, notwithstanding the fact that in some instances lands hereinafter described have decreed water rights of different priorities, the maximum amount which may be diverted by any appropriator at any one time under any and all of the priorities hereinafter set out shall be, and is hereby, limited to one-fiftieth ($1/50$ th) of a second foot of water per acre for the land described in this decree, and that the use of the water herein mentioned is limited and confined to the land described in this decree, and that at all times when the water hereby decreed is not being actually used upon the land to which the same is hereby decreed, the said water must be permitted to flow down the stream for the benefit of junior appropriators.

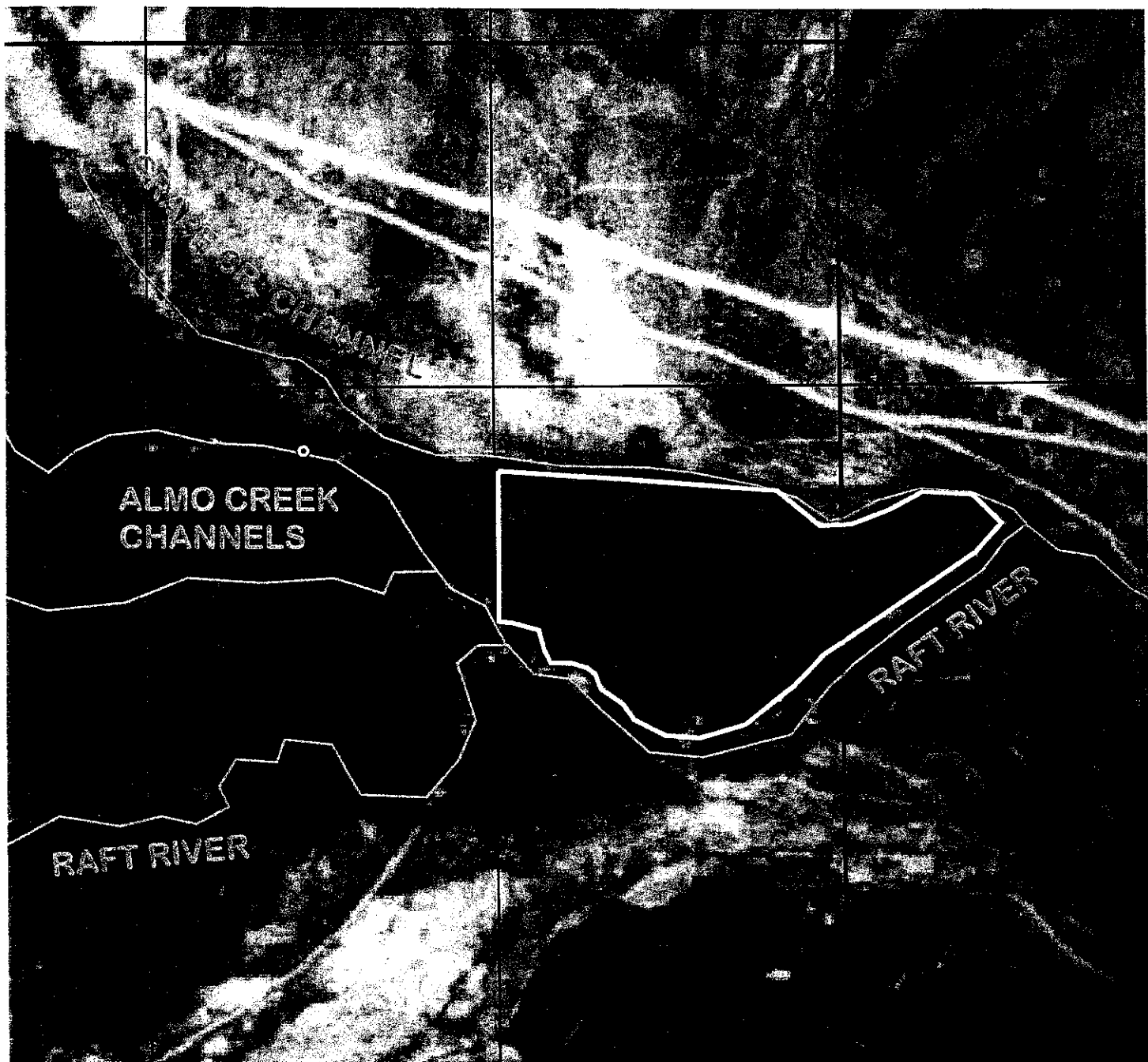
Idaho Department of Water Resources

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#1

RIGHT: 43-10356

RECOMMENDED PLACE OF USE
TWP 15S, RNG 25E, Sec 32, 33
Data entry on October 30, 2000



⊙ RECOMMENDED POINT OF DIVERSION

RECOMMENDED PLACE OF USE

SECTION LINES

QUARTER/QUARTER LINES



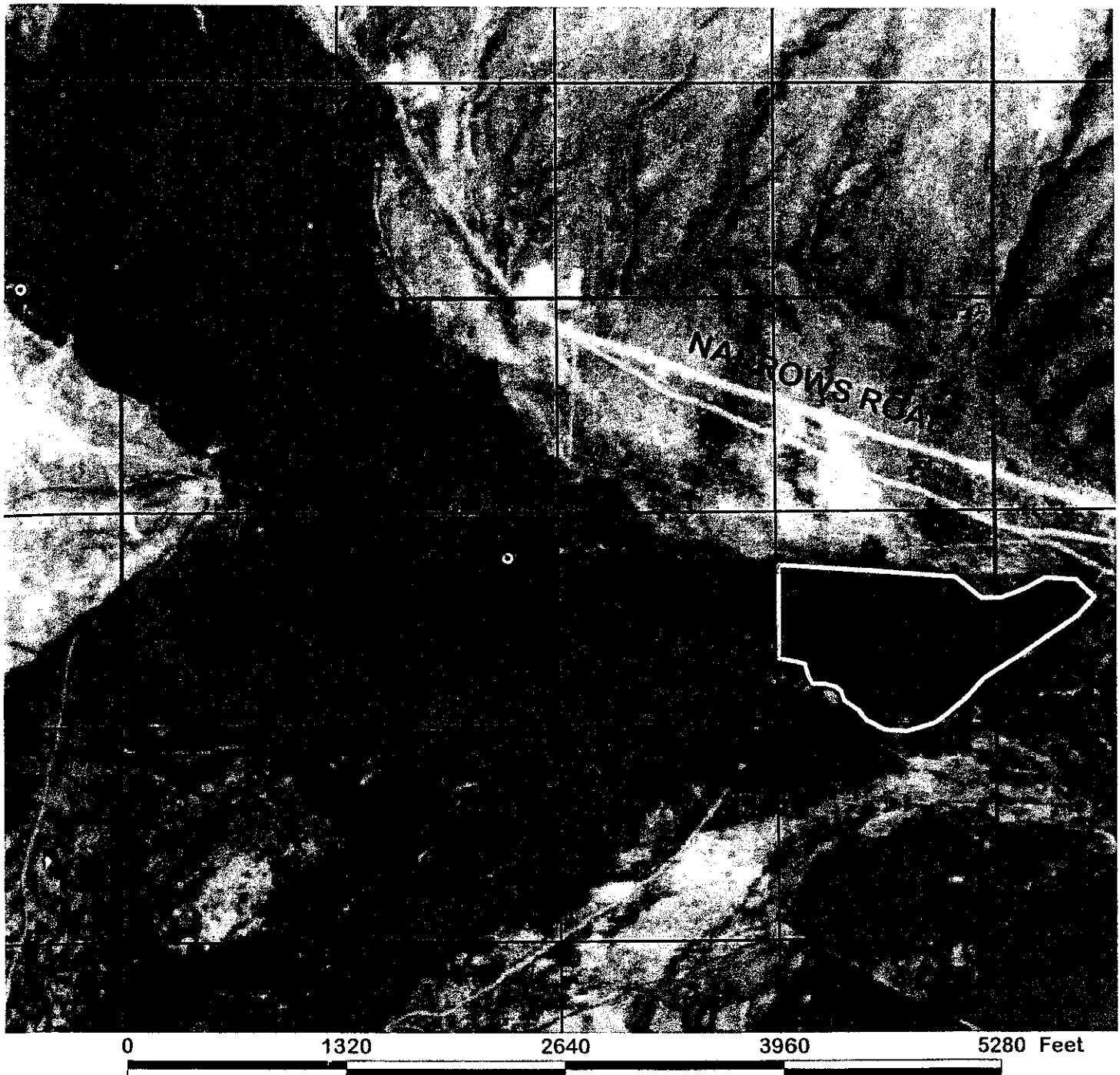
GIS PLACE OF USE PRESENTATION
1987/1988 NAPP AERIAL PHOTOGRAPHY
DATA ENTRY BY VIKIE HANCOCK

#3

Idaho Department of Water Resources

RECOMMENDED PLACE OF USE
TWP 15S, RNG 25E
Data entry on June 25, 2001

RIGHTS: 43-10356



⊙ RECOMMENDED POINT OF DIVERSION

RECOMMENDED PLACE OF USE

SECTION LINES

QUARTER/QUARTER LINES



GIS PLACE OF USE PRESENTATION
1987/1988 NAPP AERIAL PHOTOGRAPHY
PREPARED BY VIKIE HANCOCK

FIELD NOTES

GPS POINTS COLLECTED 6-20-2001

TWP 15S, RNG 25E

