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Department of Water Resources

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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**SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NO. 43-10356**

In Re SRBA

Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources

Karl J. Dreher, Director

David R. Tuthill Jr., Adjudication Bureau Chief

May 20, 2003

I. INTRODUCTION

The Director of the Idaho Department of Water Resources (“IDWR” or “the Department”) submits this Supplemental Director’s Report regarding subcase number 43-10356 in accordance with Idaho Code § 42-1412(4) and Administrative Order I. This report sets forth the basis of the Department’s recommendation for the above-listed water right and was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill, Jr., Adjudication Bureau Chief for IDWR.

The following employees from the Department have knowledge of the information contained in this report: David R. Tuthill, Jr., IDWR Adjudication Bureau Chief; Doug Jones, Water Rights Supervisor, IDWR, Southern Region Office; and Vikie Hancock Senior Water Resource Agent, IDWR, Southern Region Office.

II. SUMMARY OF THE ISSUES

Over the course of the proceedings, several issues, in addition to forfeiture, have arisen. The objections state that the water right should not exist. However, after the hearing on Interim Administration, additional issues have been illuminated. Specifically, if the water right is found to exist, then the source is not Almo Creek water but rather, is unnamed springs. Furthermore, even if the source of the water right is found to be Almo Creek, it should not be administered separately from Raft River.

III. PROCEDURAL BACKGROUND

Water right claim number 43-10356 was reported in IDWR’s September, 2001, *Director’s Report for Irrigation and Other Water Rights, Reporting Area 7, IDWR Basin 43*. Water Right number 43-10356 is owned by William D. Jones and Son (“Jones” or “Claimant”). Several objections were filed to this water right. The objections specifically state that no such

water right exists. Several settlement conferences both formally and informally were held between the parties. On December 5, 2002, a Joint Motion for Interim Administrative Order was filed by the objectors. A hearing was held on that Motion on April 1, 2003. The Special Master recommended and the SRBA Court ordered that Interim Administration of water right number 43-10356 be in accordance to the Director's Report and be administered separately from Raft River as part of Almo Creek Water District 43D.

IV. DISCUSSION

The Director's Report recommended water right number 43-10356 with a priority date of April 1, 1935, from the source Almo Creek, tributary to Raft River, with a quantity of 0.56 cfs. The place of use for the water right is limited to 28 total acres. As Figure 1 attached hereto indicates, this water right is located at the very end of Almo Creek and is the last water right on that stream right before Almo Creek joins Raft River. Almo Creek is shown on the U.S. Geological Survey quadrangle map to be tributary to the Raft River in this area. (See Figure 2 attached hereto)¹ Almo Creek can be characterized as discontinuous, but connected, stream segments. Almo Creek flows on the surface in gaining reaches, and sinks below the surface in losing reaches, depending on irrigation practices and seasonal ground water table fluctuations. As Figure 1 depicts, Almo Creek naturally flows in a southeasterly direction but some man-made ditches have altered this natural course.

This report will provide the basis of the Department's recommendation primarily of the elements of priority date, point of diversion and source. Within that discussion, the basis of IDWR's recommendation for place of use and quantity will also be addressed. This report will

¹ Figure 2 is a map prepared by IDWR using information from the U.S. Geological Survey. The letter attached to Figure 2 explains that USGS misidentified Almo Creek and called the natural historic channel of Almo Creek, Edwards Creek. However, this error has been remedied and Almo Creek is properly identified on Figure 2 as prepared by IDWR.

also briefly discuss the Department's basis for including this water right to be administered as a separate water right from Raft River.

Priority Date. In 1928 the district court entered a decree that set forth the water rights from Raft River and its tributaries, including Almo Creek in *Albion Idaho Land Co. v. Adams*, Decree No. 992 (D. Idaho 1928) ("*Jobe Adams Decree*"). Claimant's grandfather was decreed water from Raft River for the farm that is claimed as part of water right number 43-10356. However, the Jobe Adams Decree did not mention this water right from Almo Creek; thus, the basis of water right number 43-10356 is beneficial use. When asked, the watermaster of district 43D had no recollection of water ever being administered to the Claimant from Almo Creek.

Claimant bases his claim on an 1888 quit claim deed from Franklin Gwin to Anna Gwin for 160 inches of the waters of Almo Creek and Raft River for use upon the Jones' property. An affidavit from Mr. Jones' mother, Leona Jones states that she remembers this land irrigated as early as 1916 when she was a child and that water was used whenever available from the channel by spring runoff and summer storms.

The 1956 and 1978 aerial photographs attached hereto as Exhibits A and B, clearly show a large ditch running from the west edge of the Jones' property straight west a little more than 1/8 mile to a meandering Almo Creek stream channel. (See Figure 1). An additional affidavit from Leona Jones was submitted in which she stated that she married Claimant's father, Oscar, in 1930 and remembers using water from Raft River and Almo Creek. A neighbor, Jim Sheridan, signed an affidavit stating that he witnessed Oscar and Leona Jones irrigating the subject property from Almo Creek and putting up hay in the early 1940s.

After reviewing the 1956 and 1978 aerial photos it also became apparent that the Claimant changed the channel of Raft River to flow through the SENE Section 32 and SWNW

Section 33 sometime after 1956 and before 1978. Since their method of irrigation from Almo Creek was surface flooding, this changing of the channel prevented any water from Almo Creek reaching lands now lying on the southeast side of the current Raft River channel. The Department recommended the water right based on aerial photos and the various affidavits for 28 acres of irrigation from Almo Creek, with a priority date of April 1, 1935. This water right is the most junior water right on Almo Creek and is junior to the objectors' water rights from Raft River.

Source and Point of Diversion. On June 20, 2001, a field exam was conducted for water right number 43-10356. The point of diversion was reviewed to locate it as it existed in 1987. The Department used GPS to identify the exact location of the point of diversion which was identified at that time as the west end of the straight ditch that runs more or less directly west from the Jones' fence-line to intersect a natural channel. (Point G on Figure 1). At the time of this exam, there was water in the natural channel and in the straight ditch. It was determined that the Jones' historical point of diversion should be identified as the beginning of the man-made ditch that had been apparent in 1956, 1978 and 1987 photos. It was also noted that this ditch had a substantial breach in the south bank where all the water spilled out into a deeply cut channel running toward the southeast and Raft River. (Point F on Figure 1). The GPS position of this breach was ascertained and it corresponded to the location of a channel that could be seen in the 1978 and 1987 aerial photos. (Point F on Figure 1) The upper point of diversion Jones' claimed in the SESESE Section 30 was recommended as claimed although that site was never examined and IDWR has since learned that this point of diversion does not exist.

On April 8, 2003, the Department again conducted a field visit for water right number 43-10356; Doug Jones and Vikie Hancock ("the agents") conducted the visit. Please refer to Figure

1 to trace the route taken during this exam. The exam began at Point A on Figure 1 at Sylvia Knight's point of diversion located in the NWSE Section 30. At this site there is a cement head gate that can divert water out of Almo Creek to the east. There was water flowing in Almo Creek at this spot and no water was being diverted. The agents then followed Almo Creek south, to a point in the NENENE Section 31, below the north slope of a prominent triangular bluff that juts into the meadow from the west, Point B on Figure 1. At this spot all the surface flow of Almo Creek is permanently routed into a ditch that follows the land contour around the bluff and south onto lands owned by Knight in the SWNW Section 32. At point B, high water flows can run over the top of the channel and flow into an original channel of Almo Creek. Lyle Woodbury, who leases the property from Sylvia Knight, was using the water in the ditch diverted at point B to irrigate these lands near point C on Figure 1. There was a shallow dry channel that could convey any unused water past point C toward Raft River.

From the top of the bluff, parts of the old natural channel of Almo Creek could be seen meandering to the southeast across the flat meadowland between the point of the bluff and the Jones' new pump installation, point D on Figure 1. The agents accessed this channel from the west fence line of the William Jones property, after first inspecting the site of Jones' pump.²

At the pump site, water was flowing unchecked through the cement dam to join Raft River. It was noted that water would need to be backed up to a depth of two feet to reach the intake of the pump. Water was flowing into the area directly above the dam from the northwest in what appeared to be a natural channel and from the north in a very small ditch, that ran down

² The Department is aware that the Claimant has in recent years changed his delivery system to include a concrete structure located across the historic natural channel of Almo Creek in Section 32 NESWSE. (Point D on Figure 1.) The Department has determined that pumping from that position may cause injury to senior Raft River water rights and may improperly impound unnamed springs that are tributary to Raft River. Therefore, the Department requires that the claimant allow water to pass through the existing concrete structure located in Section 32 NESWSE. The claimant may pump water further north of the concrete structure either directly from the ditch as depicted on Figure 1 or from a different holding pond, if such pond does not intercept springs that would be tributary to either Almo Creek or the Raft River.

the west fence line of the Jones' property. The agents followed this small ditch 540 feet as it ran north then turned due west at point E on Figure 1. The small ditch continued for 575 feet to point F where it became a channel that was six feet wide with water as much as three feet deep. At this location on the channel, commonly referred to as the "wash-out" point F on Figure 1, water was leaking through the earthen embankment that had been reconstructed in 2002 to repair the wash-out. The water that was leaking from the embankment collected in a deeply cut channel which ran to the southeast toward the Jones' pump site and the Raft River channel. See Figure 1.

The agents then followed the large straight ditch further west from point F until it intersected with a deeply cut meandering channel containing a small flow of water coming from the northwest and also from the southwest, point G on Figure 1. At this location, some reconnaissance was done to determine the source of the water here. It was determined that water was springing up from the meadow floor and flowing in these and other small meandering channels, all generally southeasterly, and that the source was underflow from Almo Creek. It also appeared that at point G the natural channel of Almo Creek had been permanently altered many years ago to force creek water into the straight east-flowing ditch, and that any surface flow coming down the natural channel of Almo Creek had flowed through this man-made straight channel to point F and then through the "wash out" to Raft River. In fact, other than the Knight diversion around the bluff, (point B) the straight channel route has been the only one in existence for surface water in Almo Creek above point D to reach Raft River since its construction. Aerial photography shows that the straight ditch existed at least as early as 1956. The deeply incised channel of Almo Creek near the confluence with Raft River collects seep water and overland flows not otherwise appropriated and conveys the water to the Raft River.

Based on the April 8, 2003, field exam, it is apparent that the straight man-made ditch has become the natural channel of Almo Creek and should be so recognized by the Department. Therefore, the Department has confirmed that the source for the Claimant's water right number 43-10356 is Almo Creek. Furthermore, the Claimant's point of diversion should be identified in the NESWNE Section 32, T15S, R25E, where the earthen embankment repaired the washout, point F on Figure 1, and where a controlling device could be installed to allow flows in excess of Jones' water right to continue to Raft River.³ Attached hereto as Exhibit C is a corrected Director's Report that changes the Department's recommendation on the point of diversion element. This water right properly has only one point of diversion as described on Exhibit C.

Separate Administration Designation. The Department included water right number 43-10356 on its general provision for separate streams and listed this water right as being separate. That recommendation specifically states:

The following water rights from the following sources of water in Basin 43 shall be administered separately from all other water rights in Basin 43 in accordance with the prior appropriation doctrine as established by Idaho law.

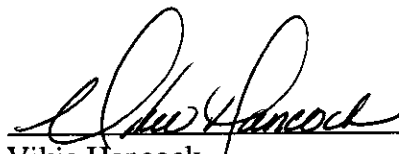
The Department included this water right as a separate water right based on language in the prior *Jobe Adams Decree* that designated Almo Creek as a separate source. *Albion Idaho Land Co. v. Adams*, Decree No. 992 (D. Idaho 1928). Water right number 43-10356 was not decreed in the *Jobe Adams Decree* but is a beneficial use right with a 1935 priority date. This water right has never been administered because it is a beneficial use right. Consequently, this water right, although technically within the boundaries of the Almo Creek Water District, 43D has never been actively administered as part of any water district.

³ At this time there is no way to measure water at the recommended diversion point located at point G and it may not even be reasonable to install such a device at this point. However, it would be fairly easy to install a measuring device at the proposed point of diversion at point F.

V. CONCLUSION

The above discussion provides the basis of the Department's recommendation for water right number 43-10356. The source of this water right is correctly described as Almo Creek. However, this water right only has one point of diversion as described on the corrected director's report attached hereto as Exhibit C. Almo Creek was altered from its natural channel years ago and the ditch running from point G on Figure 1 directly east should now be considered the channel of Almo Creek for administrative purposes. The recommendation should be corrected to reflect point F, in the NESWNE Section 32, T15S, R25E, as the point of diversion from the altered channel of Almo Creek.

SUBMITTED this 20 day of May, 2003.



Vikie Hancock
Senior Water Resources Agent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of May, 2003, I caused to be served a true and correct copy of the foregoing by the following method to:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☒ Facsimile

2. Copies to:

Jason D. Walker
Ling & Robinson
P.O. Box 396
Rupert, ID 83350

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Jason Miciak
392 Falls Ave.
P.O. Box 2632
Twin Falls, ID 83303-2632

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Clark Ward
HC 61 Box 1560
Malta, ID 83342

☒ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile



Signature of Person Mailing Form

9-17-56

YT-3R

T 15 S R 25 E Sec 32 33

1956

A43-10356

EXHIBIT A



1978 ASCS AERIAL PHOTO
1978

EXHIBIT B

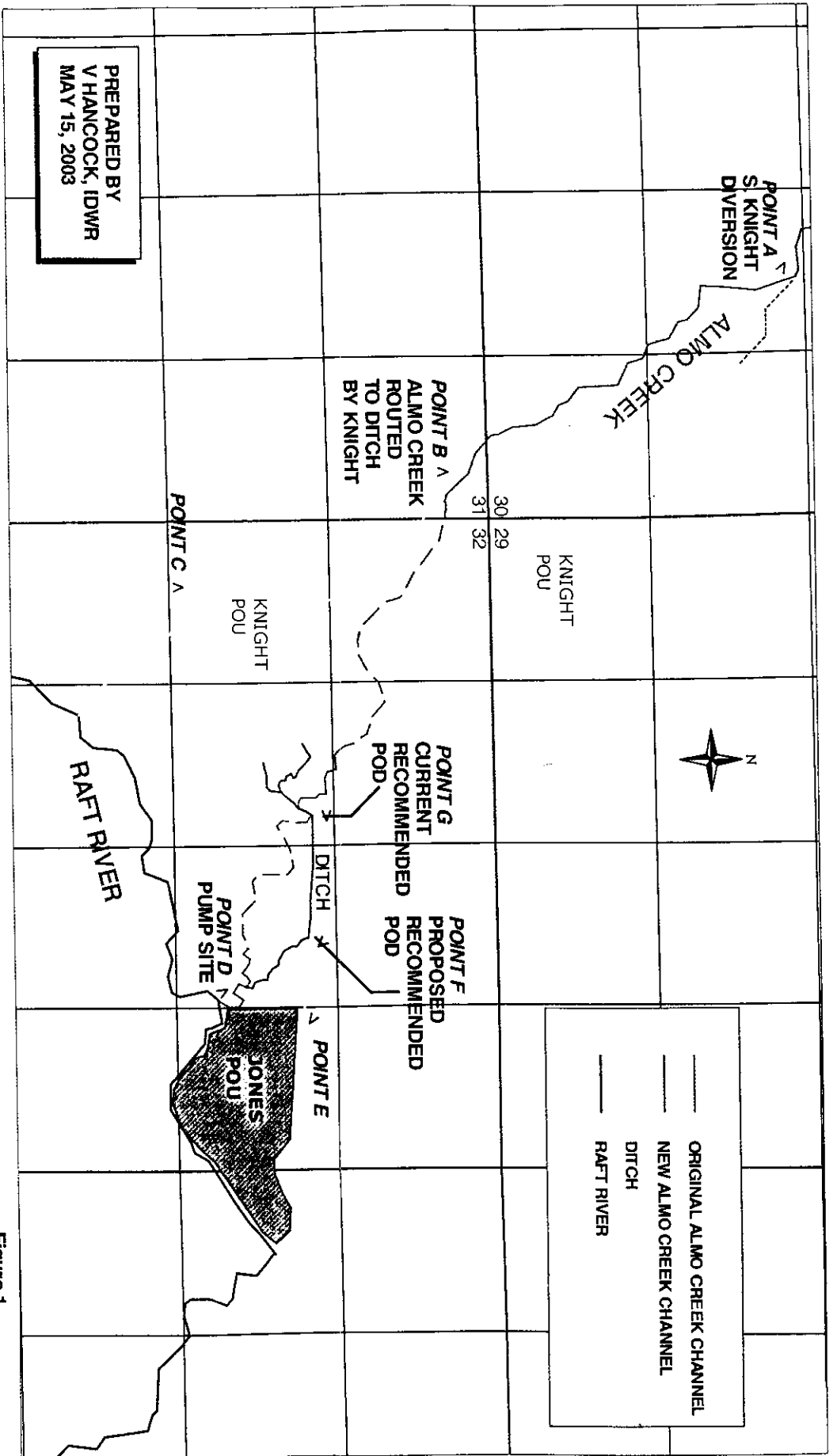


Figure 1

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 43-10356

NAME AND ADDRESS: WILLIAM D JONES & SONS
C/O WILLIAM D JONES
PO BOX 152
ALMO ID 83312

SOURCE: ALMO CREEK

TRIBUTARY: RAFT RIVER

QUANTITY: 0.560 CFS

PRIORITY DATE: 04/01/1935

POINT OF
DIVERSION: ~~T15S R25E S30 SESECE Within CASSIA County~~
T15S R25E S32 NESENW NESWNE Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	0.560 CFS

PLACE OF USE: IRRIGATION Within CASSIA County

T15S R25E S32	SENE	23.0	T15S R25E S33	SWNW	5.0
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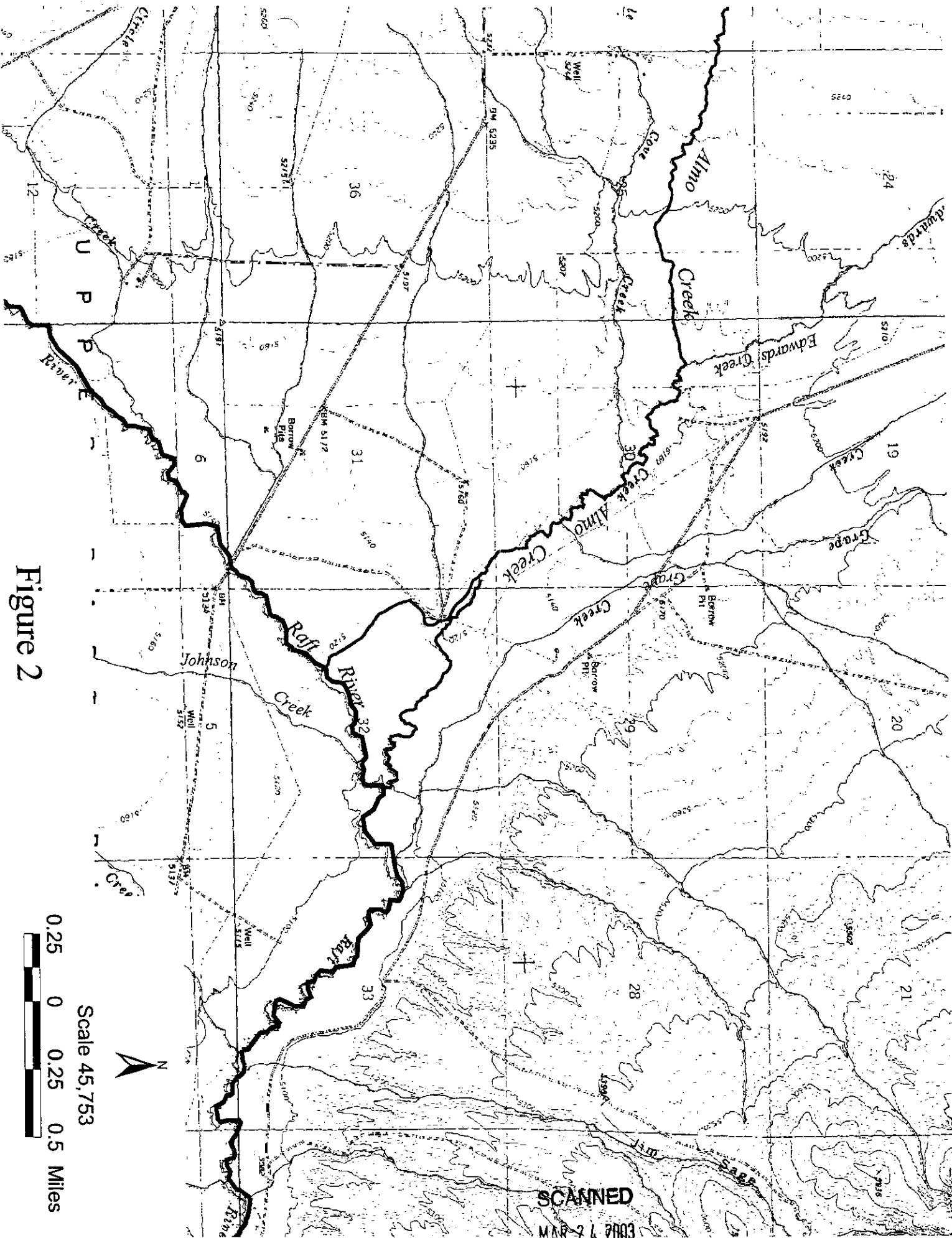
28 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE
EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO
LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION
42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

SOURCE IS ALSO KNOWN AS SOUTH ALMO CREEK.





UNITED STATES BOARD ON GEOGRAPHIC NAMES

In reply please use this address:
U. S. Geological Survey
523 National Center
Reston, Virginia 20192-0523

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Department of Water Resources
Southern Region

March 13, 2001

Ms. Vikie Hancock
Senior Water Resources Agent
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Dear Ms. Hancock:

We are pleased to inform you that the U.S. Board on Geographic Names, at its February 8, 2001 meeting, approved the proposal to change the application of the names Almo Creek and Edwards Creek for streams in Cassia County. This decision was made in agreement with the recommendation of the Idaho Geographic Names Advisory Council. The changes have been entered into the Nation's official automated geographic names repository and will appear in Decision List 2001. The entries will read as follows.

Almo Creek: stream, 21 km (13 mi) long, in Sawtooth National Forest; heads in the Albion Mountains, at the S end of Almo Park at 42°08'49"N, 113°43'55"W, flows generally E and SE through the community of Almo, to join Raft River at the mouth of Johnson Creek; named for the nearby community of Almo; Cassia County, Idaho; Tps 15&14S, Rgs 25-23E, Boise Mer; 42°04'33"N, 113°33'16"W; USGS map - Jim Sage Canyon 1:24,000 (mouth of feature); Not: Edwards Creek - in part, South Almo Creek.

Edwards Creek: stream, 11.3 km (7 mi) long, in Sawtooth National Forest; heads 1.9 km (1.2 mi) S of Cache Peak at 42°10'29"N, 113°39'22"W, flows SSW for 1.6 km (1 mi) then SE for 9.7 km (6 mi) to enter Almo Creek (q.v.) 3.2 km (2 mi) ESE of the community of Almo; Cassia County, Idaho; Tps 15&14, Rgs 25&24E, Boise Mer; 42°08'49"N, 113°43'55"W; USGS map - Jim Sage Canyon 1:24,000.

Sincerely yours,

Roger L. Payne
Executive Secretary
U.S. Board on Geographic Names