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Department of Water Resources

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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,

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

COMES NOW the Claimant, William D. Jones and Son (hereinafter "Jones"), by and through its attorney of record Jason D. Walker of the firm Ling, Robinson & Walker, and respectfully submits proposed findings of fact and conclusions of law as supplemented by the claimant's Post-Trial Memorandum filed contemporaneously herewith.

FINDINGS OF FACT

1. William D. Jones and Son, c/o William D. Jones, is the registered owner of Water Right No. 43-10356 (hereinafter the "Jones right") See *Trial Exhibit 2*.

2. The source of the Jones right is Almo Creek, also known as South Almo Creek. See *Trial Exhibit 2*.

3. The quantity of the Jones right is 0.560 cfs. and

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

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3 the priority of the Jones right is April 1, 1935. See *Trial*
4 *Exhibit 2*.

5 4. The point of diversion for the Jones right is in
6 Township 15 South, Range 25 East, Boise Meridian, Section 13,
7 NESWNE in Cassia County, State of Idaho. See *Trial Exhibit 2*.

8 5. The purpose of the Jones right is irrigation. See
9 *Trial Exhibit 2*.

10 6. The period of use for the Jones right is April 1
11 through October 31. See *Trial Exhibit 2*.

12 7. The place of use of the Jones right is Township 15
13 South, Range 25 East, Boise Meridian, Section 32, SENE (23 acres)
14 and Section 33, SWNW (5 acres) in Cassia County, State of Idaho,
15 for a total of 28 acres. See *Trial Exhibit 2*.

16 8. The basis of the Jones right is beneficial use. See
17 *Trial Exhibit 2*.

18 9. Roscoe Ward, Nolan K. Branch, Warr Brothers, and
19 Rodney Hall (hereinafter collectively referred to as "Objectors")
20 all have water rights below Almo Creek on Raft River. See *Trial*
21 *Transcript p.123, L.16*.

22 10. Each of the Objectors' water rights on Raft River
23 are included in the Albion-Idaho Land Company v. Jobe Adams, et
24 al., Decree No. 992 entered April 6, 1929 by the District Court of
25 the United States for the District of Idaho, Southern Division
26 (hereinafter "Jobe Adams Decree"). See *Trial Transcript p.123,*
27 *L.16*.

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3 11. The Jobe Adams Decree sets apart Almo Creek as a
4 separate stream from Raft River and specifically states that "Almo
5 Creek . . . [does] not contribute to the supply of the water users
6 out of Raft River and its tributaries in the irrigation of land."
7 See *Jobe Adams Decree*, p.30.

8 12. The Jobe Adams Decree further states that Almo Creek
9 is set apart as a separate water district "and that the users of
10 the water from Raft River and its tributaries have no interest
11 whatever in the use of waters of Almo Creek and in the distribution
12 of the same." See *Jobe Adams Decree*, p.30.

13 13. The general provisions of the Director's Report
14 includes the Jones right in the provisions for separate streams and
15 lists the right as being separate. See *Affidavit of Vicki Hancock*,
16 *Exhibit 1 at p.3*.

17 14. The Objectors have admitted the validity of all the
18 elements of the Jones right as recommended by the Director with the
19 exception of the separate streams provision.

20 CONCLUSIONS OF LAW

21 1. Water Right No. 43-10356 should be partially decreed
22 as set forth in the Supplemental Director's Report and as is
23 consistent with the findings of fact herein.

24 2. The Objectors are barred by the doctrine of
25 collateral estoppel in asserting that the Jones right is not a
26 separate stream.

27 3. Objectors' predecessors in interest had a full and

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3 fair opportunity to litigate the issue of separate streams decided
4 in the Jobe Adams Decree.

5 4. The issue on separate streams decided in the prior
6 litigation is identical to the issue presented in the present
7 action.

8 5. The issue on separate streams was actually decided
9 in the prior litigation.

10 6. The Jobe Adams Decree was a final judgment on the
11 merits.

12 7. The Objectors, against whom the issue of collateral
13 estoppel is asserted, are in privity with their predecessors in
14 interest who were parties to the Jobe Adams Decree.

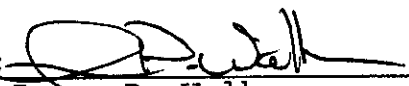
15 8. Consistent with the Jobe Adams Decree, Almo Creek
16 and its tributaries are to be set apart as a separate water
17 district.

18 9. The Jones right is a part of the Almo Creek water
19 district.

20 10. The Objectors have no interest whatever in the use
21 and distribution of the waters of Almo Creek, including the Jones
22 right.

23 Respectfully submitted this 3rd day of October, 2003.

24 LING & ROBINSON

25
26 By: 

27 Jason D. Walker
28 Attorneys for Claimant

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3 CERTIFICATE OF MAILING

4 I hereby certify that on the 3rd day of October, 2003, I
5 served copies of the foregoing *Findings of Fact and Conclusions of*
6 *Law* upon:

7 Jason Miciak, Esq.
8 P. O. Box 2632
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10 IDWR Document Depository
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14 Office of the Attorney General
15 State of Idaho
16 P.O. Box 44449
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18 by depositing said document in the United States mail, postage
19 prepaid, in envelopes addressed to said parties/entities at the
20 foregoing addresses.

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28 
Jason D. Walker