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OCT - 6 2003

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) Subcase No. 43-10356
Case No. 39576,) CLAIMANT'S POST-TRIAL MEMORANDUM

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 Claimant's post-trial memorandum. This memorandum is filed
in response to Objectors' Opening Post-Trial Brief and disputes
facts and conclusions raised by Roscoe Ward, Nolan K. Branch, Warr
Brothers, and Rodney Hall (hereinafter collectively referred to as
"Objectors").

I. FACTS AND BACKGROUND

This subcase is a part of the Snake River Basin Adjudica-
tion, a general adjudication governed by Chapter 14 of Title 42,
Idaho Code, and comes before the above-entitled court on the

CLAIMANT'S POST-TRIAL MEMORANDUM - 1 -

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3 objection to the Director's Report filed by the Objectors.
4 Objections were also filed by Clark Ward and Reid S. Stuart.
5 However, these objections were withdrawn prior to trial. The
6 objections at issue in this subcase are to the Director's
7 Recommendation of a Water Right Acquired Under State Law for
8 William D. Jones and Son of Almo, Idaho, and to the Supplemental
9 Director's Report regarding Subcase No. 43-10356.

10 All of the objections in this matter were filed by the
11 various Objectors on either January 30, 2002, February 1, 2002 or
12 February 6, 2002. The objections filed state only that "The water
13 right should not exist." Under the section of Standard Form 1
14 asking for the reasons supporting the objection, each objection
15 simply states "No such water right." No amended objections were
16 filed with the Court prior to trial.

17 During the course of litigation, the Objectors filed a
18 Joint Motion for Interim Administration. Initially, the Claimant
19 objected to the Joint Motion but then agreed that the water right
20 should be administered in accordance with the Director's Report
21 during the pendency of the action. The Objectors, however, then
22 raised for the first time the issue that Water Right No. 43-10356
23 (hereinafter the "Jones right") should be administered together
24 with Water District 43-B responsible for the administration of
25 water rights on Raft River instead of with Water District 43-D, the
26 water district responsible for the administration of Almo Creek
27 water rights. This was in direct conflict with the recommendation

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3 of the Department of Water Resources. The Special Master entered
4 the Order of Interim Administration requiring that the Jones right
5 be administered in accordance with the recommendations of the
6 Department of Water Resources and not administered with the Raft
7 River rights.

8 The Jones right is recommended with its source in Almo
9 Creek. See *Trial Exhibit 2*. The water right is recommended with
10 a priority date of April 1, 1935 and a quantity of 0.56 cfs. The
11 point of diversion, as recommended, is in Township 15 South, Range
12 25 East, Boise Meridian, Section 32, NESWNE within Cassia County,
13 Idaho. The water right is to be used for irrigation from April 1
14 through October 31 of each year. The place of use, as described in
15 the Recommendation, is Township 15 South, Range 25 East, Boise
16 Meridian, Section 32, SENE for 23 acres and Township 15 South,
17 Range 25 East, Boise Meridian, Section 33, SWNW for 5.0 acres for
18 a total of 28 acres. The basis of the original claims, as recom-
19 mended, is a beneficial use claim. See *Trial Exhibit 2*.

20 The Idaho Department of Water Resources further included
21 the Jones right on its general provision for separate streams. See
22 *Affidavit of Vicki Hancock, Exhibit 1 Recommendation of Idaho*
23 *Department of Water Resources for Interim Administration for*
24 *Subcase No. 43-10356*. The Department's general provision states as
25 follows:

26 The following water rights from the following
27 sources of water in Basin 43 shall be
28 administered separately from all other water

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3 rights in Basin 43 in accordance with the
4 prior appropriation doctrine as established by
5 Idaho law.

6 Under the general provision, the Jones right is to be administered
7 as part of Water District 43-D which, as stated above, is responsi-
8 ble for the administration of all Almo Creek water rights. These
9 water rights are to be administered separately from Raft River.

10 The Court has taken judicial notice of the Jobe Adams
11 Decree, more correctly known as the Albion-Idaho Land Company v.
12 Jobe Adams, et al., Decree No. 992 entered April 6, 1929 by the
13 District Court of the United States for the District of Idaho,
14 Southern Division. The Jobe Adams Decree adjudicated water rights
15 on the Raft River drainage and, in particular, included the
16 Objectors' water rights and all water rights then existing on Raft
17 River and Almo Creek.

18 In addition to the trial held in this matter on May 29
19 and May 30, 2003, the Objectors also requested a field inspection
20 with the Special Master. The field inspection occurred on June 6,
21 2003 and included Special Master Terrence Dolan, Doug Jones and
22 Vicki Kelly from the Idaho Department of Water Resources, and
23 counsel for both the Objectors and the Claimant. On September 5,
24 2003, Objectors filed their Opening Post-Trial Brief.

25 At the trial of this matter, it was clearly established
26 that the source of the Jones right is in Almo Creek. None of the
27 other elements of the Jones right were disputed. The Objectors
28 have now admitted that the water right should be decreed as set

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3 forth in the Director's Report (*Trial Exhibit 2*) with the exception
4 of the general provision on separate streams. The claimant agrees
5 that the right should be decreed as recommended, but that it should
6 be included in the separate streams designation contained in the
7 general provisions.

8 II. STANDARD OF REVIEW

9 A claimant of a water right acquired under state law has
10 the ultimate of persuasion as to each element of the water right.
11 *Idaho Code* § 42-1411(5). The Director's Report is *prima facie*
12 evidence of the nature and extent of that water right. *Id.* A
13 party filing an objection to any portion of the Director's Report
14 has the burden of going forward to rebut the report on all issues
15 raised by the objection. *Id.*

16 Contrary to the suggestion of the Objectors, this subcase
17 is not before the Special Master on appeal or review. See *Opening*
18 *Post-Trial Brief*, p.2. Instead, this matter is before the Special
19 Master as a trial court under the authority of the District Court.
20 A "trial" is defined as a judicial examination and determination of
21 issues between parties to an action, whether they be issues of law
22 or fact. *Black's Law Dictionary*, 6th Ed. In this case, the
23 Special Master by and through the District Court is not a reviewing
24 court, but the court of original jurisdiction as contemplated in
25 the Idaho Constitution, Art. V, § 20. See also *Idaho Code*
26 § 42-1411A and *State v. Finch*, 79 Idaho 275, 281, 315 P.2d 529, 531
27 (1957).

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3 The fact that the Special Master is acting under the
4 authority of the District Court as the court of original jurisdic-
5 tion does not remove the burdens imposed by Idaho Code § 42-1411(5)
6 nor does it remove the *prima facie* weight given to the Director's
7 Report, as suggested by the Objectors. Instead, the burden is
8 still clearly upon the Objectors to go forward with evidence as to
9 the issues raised in their objections. As stated by the Supreme
10 Court in State v. Hagerman Water Right Owners, 130 Idaho 736, 746,
11 947 P.2d 409, 419 (1997), the Director's Report is "*prima facie*
12 evidence and the facts contained therein are presumed to be correct
13 until such time as [an objector] produces sufficient evidence to
14 rebut that presumption." See also In Re: SRBA Case No. 39576, 128
15 Idaho 246, 255-256, 912 P.2d 614, 623-624 (1995) and Fremont-
16 Madison Irrigation District and Mitigation Group v. Idaho Ground
17 Water Appropriators, Inc., 129 Idaho 454, 462, 926 P.2d 1301, 1309
18 (1996), and Idaho Rule of Evidence 301. The burden then is still
19 upon the Objectors to go forward with evidence as to the issues
20 raised in their objections.

21 This does not negate the ability of the judiciary to
22 apply the law to the facts, but simply establishes a presumption as
23 to the facts and clearly establishes which party has the burden of
24 going forward. When presumptive facts are rebutted, the presump-
25 tion disappears and the facts upon which the presumption is based
26 are weighed with all other facts which may be relevant. State v.
27 Hagerman Water Right Owners, 130 Idaho at 745-746, 947 P.2d 418-149

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3 (1997).

4 Therefore, in this case, the facts, as set forth in the
5 Director's Report, are presumed to be correct. The burden of
6 rebutting those facts is upon the objectors. The Objectors must go
7 forward with evidence as to all issues raised in their objection.
8 If the presumptive facts are rebutted, the Special Master must
9 weigh all the facts and apply those facts to the law.

10 III. ISSUES PRESENTED

11 The issue before the Special Master is whether Water
12 Right No. 43-10356 should be decreed as recommended by the Director
13 of IDWR.

14 IV. DISCUSSION

15 1. Water Right No. 43-10356 should be decreed as
16 recommended by the Director of Idaho Department of Water Resources.

17 The only issue raised by the Objections filed in this
18 matter is whether or not this water right should exist. Specifi-
19 cally, the Objectors asserted that there was "no such right."
20 However, the Objectors have now acknowledged the existence of the
21 water right and concur that the water right should at least be
22 decreed as recommended by the Director with the exception of the
23 general provision regarding separate streams. Even if the
24 Objectors had not capitulated on the existence of this right, the
25 *prima facie* evidence of the Director's Report and the evidence
26 produced at the trial of this matter clearly and unequivocally
27 establish the elements of the water right as recommended by the

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3 Supplemental Director's Report regarding Water Right No. 43-10356.
4 As this is the only issue raised by the objections in this matter,
5 the water right should be decreed as recommended.

6 2. The Objectors are barred by the doctrine of
7 collateral estoppel from asserting that the Jones right, with its
8 source in Almo Creek, should be stripped of its separate stream
9 designation.

10 Even if the Court finds that the Objectors have properly
11 raised the issue of separate streams, the Objectors are barred by
12 the doctrine of collateral estoppel asserting an interest in the
13 use or distribution of the waters of Almo Creek. It is undisputed
14 that the source of the Jones right is in Almo Creek. This is
15 admitted by the Objectors in their Opening Post-Trial Brief and
16 clearly established by the evidence presented at trial as well as
17 the field inspection. Furthermore, it is undisputed that the
18 Objectors' water rights are all in Raft River and were a part of
19 the Jobe Adams Decree. See *Trial Transcript*, p.123, L.16. Under
20 the Jobe Adams Decree, Objectors are collaterally estopped from
21 asserting any interest in the waters of Almo Creek.

22 The Objectors have correctly stated the proposition that
23 a decree issued in a private water adjudication binds only those
24 parties to the decree. State v. Hagerman Water Rights Owners,
25 Inc., 130 Idaho 736, 742, 947 P.2d 409, 415 (1997). This is
26 completely consistent with the doctrine of collateral estoppel
27 which is well established in Idaho law. The Idaho Supreme Court
28 has set forth a five-factor test which must be considered in

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3 determining whether collateral estoppel will act as a bar.
4 Masterangelo v. Sandstrom, Inc., 137 Idaho 844, 848, 55 P.3d 298,
5 302 (2002); Western Industrial and Environmental Services, Inc. v.
6 Kaldveer Associates, Inc., 126 Idaho 541, 544, 887 P.2d 1048, 1051
7 (1994); and Anderson v. City of Pocatello, 112 Idaho 176, 731 P.2d
8 171 (1987). These five factors are as follows:

- 9 1. The party against whom the earlier deci-
10 sion was asserted had a full and fair opportu-
11 nity to litigate the issue decided in the
12 earlier case;
13 2. The issue decided in the prior litigation
14 was identical to the issue presented in the
15 present action;
16 3. The issue sought to be precluded was
17 actually decided in the prior litigation;
18 4. There was a final judgment on the merits
19 in the prior litigation; and
20 5. The party against whom the issue was
21 asserted was a party or in privity with a
22 party to the prior litigation.

23 Id. As to the first element of collateral estoppel, it is
24 undisputed that the Objectors' water rights on Raft River were all
25 involved in the Jobe Adams Decree. *Trial Transcript, p.123, L.16.*
26 The Jobe Adams litigation began on May 17, 1922 when the plaintiff
27 Albion-Idaho Land Company filed a complaint in the District Court
28 of the United States for the District of Idaho, Southern Division.
See Jobe Adams Decree, p.1. Each of the Objectors' predecessors in
interest were named as defendants in the Jobe Adams Decree
litigation. *Trial Transcript, p.123, L.16.*

According to the Decree, regular service of summons was
made upon all of the parties mentioned in the complaint either

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3 personally or by due publication. The matter then came before the
4 court for hearing in Burley, Cassia County, Idaho with the court
5 taking the matter under advisement on April 21, 1928. Thereafter,
6 the court entered its decree dated April 6, 1929. The decree and
7 the decision of the court demonstrate that the objectors' predeces-
8 sors in interest did have a full and fair opportunity to litigate
9 the issue of whether the Raft River water users should have any
10 claim or interest in the use or distribution of the waters of Almo
11 Creek.

12 The second element of the collateral estoppel test has
13 also been satisfied. Based on the language of the decree, there is
14 no question that the issue of separate streams was raised. In
15 fact, the Jobe Adams court directly addressed that very issue. The
16 Decree states in its pertinent part as follows:

17 That a certain creek known as Almo Creek, in
18 its natural state, at times contributes some
19 water to Raft River, but that said Almo Creek
20 and its tributaries, to wit, Grape Creek,
21 Sythe Creek, Clyde Creek and Edwards Creek, by
22 the terms of the decree of the state court,
23 has been set off as a separate water district,
24 and are separately referred to in this decree,
25 its priorities being specifically mentioned in
26 that portion of the decree having to do with
27 Almo Creek.

28 See Jobe Adams Decree, p.4, ¶ XV. In addition, and more specifi-
cally, at page 30 of the Decree, the Court states as follows:

Almo Creek. It is further ordered, adjudged
and decree, that Almo Creek and its tributar-
ies, viz., Sythe Creek, Edwards Creek, Stein
Creek, Blacksmith Fork Creek, and Grape Creek,
do not contribute to the supply of water of

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3 the water users out of Raft River and its
4 tributaries in the irrigation of the land, and
5 that said Almo Creek hereby is set apart as a
6 separate water district and that the users of
7 water from Raft River and its tributaries have
8 no interest whatever in the use of the waters
9 of Almo Creek and the distribution of the
same; that the use of 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.

10 Jobe Adams Decree, p.30. This is identical to the issue which the
11 Objectors have attempted to raise in the present case. The
12 Objectors claim that the Jones right, which has its source in Almo
13 Creek, should be included in the administration of Raft River and
14 therefore subject to call by Raft River users. The Objectors are
15 trying to accomplish exactly what was denied them in the Jobe Adams
16 Decree. They should not be able to relitigate that issue against
17 the Claimant.

18 The third element of collateral estoppel requires that
19 the issues sought to be precluded was actually decided in a prior
20 litigation. As set forth above, it is clear that the court decided
21 the issue and in fact made it undeniably clear that the Raft River
22 water users had no interest whatever in the use of water of Almo
23 Creek and the distribution of the same. This element is met.

24 Likewise, as is clearly evidenced by the Jobe Adams
25 Decree, there was a final judgment on the merits in the prior
26 litigation. As a result, the fourth element has been met.

27 The fifth element, the party against whom the issue was

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3 asserted was a party or in privity with the party to the prior
4 litigation, has also been met. Although Jones is not a party to
5 the Jobe Adams Decree as pointed out by the Objectors, Jones may
6 still assert the doctrine of collateral estoppel against the
7 Objectors who are in privity with the original parties to the
8 action. The test, as established by the Supreme Court, states only
9 that the party against whom the plea of collateral estoppel is
10 asserted need be a party or in privity with the party in the
11 earlier case. Western Industrial and Environmental Services, Inc.,
12 126 Idaho at 545, 887 P.2d at 1052, and Anderson, 112 Idaho at 184,
13 731 P.2d at 178. The Supreme Court has since confirmed that the
14 lack of mutuality is not a bar of the application of collateral
15 estoppel. Foster v. City of St. Anthony, 122 Idaho 883, 841 P.2d
16 413 (1992). Since the Claimant is asserting collateral estoppel
17 against the Objectors who are in privity with a party to the
18 earlier litigation, the final element of the collateral estoppel
19 test has been met.

20 As discussed above, the Jobe Adams Decree is a final
21 judgment on the merits for purposes of a collateral estoppel
22 analysis. In addition, all of the elements of collateral estoppel
23 have been met in this case. The Objectors should be barred from
24 asserting any interest in the distribution or use of Almo Creek
25 water and the Jones right should be decreed as recommended by the
26 Director along with the general provision involving separate
27 streams.

V. CONCLUSION

For the reasons set forth above, Water Right No. 43-10356 should be decreed as recommended by the Director of IDWR and the Objections filed in the matter should be in all respects denied. The Objectors did not properly raise the issue with respect to the separate streams and it is therefore not properly before the Court. However, even if the Court finds the Objectors have properly raised the issue of the separate streams general provision, the Objectors are barred by the doctrine of collateral estoppel from asserting any interest in the use or distribution of the waters of Almo Creek. The Jobe Adams Decree is a final judgment on the merits of that issue for the purposes of a collateral estoppel analysis. Objectors' predecessors in interest had a full and fair opportunity to litigate that issue in the Jobe Adams Decree. The issue decided in the Jobe Adams Decree is identical to the issue attempted to be raised by the Objectors in the present action. That issue was actually decided by the Jobe Adams Decree court and a final judgment on the merits was entered. Furthermore, the Objectors against whom collateral estoppel is asserted in this case are in privity with the parties to the prior litigation. For these reasons, the Objections should be in all respects denied and Water Right No. 43-10356 should be decreed as recommended by the Director and be included in the separate streams designation.

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3 DATED this 3rd day of October, 2003.

4 LING & ROBINSON

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6 By: 
7 Jason D. Walker
8 Attorneys for Claimant

9 CERTIFICATE OF MAILING

10 I hereby certify that on the 3rd day of October, 2003, I
11 served copies of the foregoing *Claimant's Post-Trial Memorandum*
upon:

12 Jason Miciak, Esq.
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19 by depositing said document in the United States mail, postage
20 prepaid, in envelopes addressed to said parties/entities at the
foregoing addresses.

21
22 
Jason D. Walker