

Roscoe B. Ward
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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	) MEMORANDUM FOR JOINT MOTION
	) FOR INTERIM ADMINISTRATIVE ORDER
SUBCASE NO. 43-10356	)

The Objectors file the following Memorandum in support of the Motion for Interim
Administrative Order;

VENUE AND URGENCY

In the hearing on November 21, 2002 a Schedule was set with the trial date set at the
end of May 2003. Most of the water in Raft River runs during or before May. Therefore an
Interim Order needs to be made for the administration of water right claim No. 43-10356 so that
this claimed water right will not injure the existing rights.

As shown in Exhibit No.1 on January 24, 2002 William Jones was ordered to cease the
use of the pump. However as shown in Exhibit No.2 on May 7, 2002, Roger Ling wrote a letter
to Allen Merritt, explaining that Jones's have continued to pump water from the new Point of
Diversion. But Mr. Ling claims that they were putting the water down a man-made ditch and
somehow using the creek channel to convey water in some manner which he claims is consistant
with Idaho Code 42-105. On page No.2 of Mr. Lings letter he says that he told Joneses "to

cease using the natural channel of Almo Creek as a conveyance structure, and that the water be conveyed to their property in the existing ditch and if necessary, then conveyed to their pump in a ditch located on their property".

As shown by Exhibit No.3 Joneses continued to pump until July 6, 2002 and that the bed of Almo Creek has been used as a storage reservoir. This is a violation of the Order which is exhibit No.1. This indicates that Joneses did not follow the Department's Order or Mr. Lings counsel, therefore we need the Court to order Joneses to not divert water from their unlawful diversion point with this pump.

As shown by Exhibit No.4 the Department has told Joneses that they should limit their irrigation to the number of acres as irrigated in 1987 and that they have plowed new ground in the spring of 2001. The Joneses are violating Idaho Code 42-104, 105, 108, 42-201 and 202 by putting in a pump at an illegal point of diversion, irrigating ground which is not in the recommended place of use and irrigating more acres than what is recommended. The Court should order the Joneses to not irrigate any ground that is not in the recommendation and to not use their pump at the illegal point of diversion.

LAW

Another issue that the Court needs to determine is what water District this claim should be governed by. The property physically lies along the banks of Raft River and does not border on Almo Creek. As shown in the middle of page 1 in Exhibit No.3 Almo Creek in the reach of the Jones diversion is not normally connected directly to Almo Creek near Almo where Almo

Creek water is decreed for irrigation.

According to Idaho Code 42-604 concerning the creation of water Districts: "that any 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 decreed area of Almo Creek. The water springs up around their recommended point of diversion North of the natural channel of Almo Creek and is a Tributary to Raft River.

The Jobe Adams Decree which governs Raft River and its Tributaries including Almo Creek, paragraph XV says " 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." as shown in Exhibit No.5.

The water that springs up around the recommended point of diversion is a Tributary to Raft River. According to paragraph XVI of the Jobe Adams Decree " the waters of certain springs arising in the bed of 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 creek 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,"

Since the water that Joneses are pumping is a Tributary to Raft River and not a Tributary to the area of Almo Creek that is in the Jobe Adams Decree therefore the claim should be governed by Raft River water District 43-B and not by Almo Creek District 43-D. This claim was claimed as part of Almo Creek and the Department recommended it as such without realizing that it is not a part of Almo Creek decree.

On page 51 of the Jobe Adams Decree it says " 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 whatever 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:**"

The decree then specifies the amounts of water to be used from Almo Creek and the specific tracts of ground that it is to be used on. The Jones property is a long distance from these decreed tracts of ground. The pump that they have been pumping with is so close to the banks of Raft River that they can pump water from Raft River when it has water in it. Therefore the court should order that claim 43-10536 should be governed by Raft River water District 43-B. For the last two irrigation seasons Joneses have been diverting water from an illegal point of diversion which would have run into Raft River while 1871 Jobe Adams Decreed water rights on Raft River have gone without water.

After specifying what water and land was decreed, the Jobe Adams Decree goes on to say; "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of the parties hereto, both plaintiff and defendants, cross-complainants and interveners, together with their heirs, successors, assigns, agents, servants and employees, are hereby severally particularly restrained and enjoined from using, attempting to use, diverting or attempting to divert, any of the waters of said Raft River or its tributaries **as hereinbefore defined and set out in any manner except as hereinbefore provided** and set out and in strict accordance with the terms of this decree.

As shown in Exhibit No.6 that William Jones's grandparents were included in the Almo Creek decree and the Jobe Adams decree and therefore Joneses are enjoined from using or attempting to use or divert any of the water of Raft River or its tributaries except as provided in the decree. If William Jones's grandparents diverted water in 1935 it was not part of the Almo Creek decree and is therefore a diversion from a Tributary to Raft River and should be governed by Raft River.

IMPOUNDING AND WASTING WATER

Joneses are violating Idaho Code 18-4302 by impounding the water in a reservoir and running it down a dry ditch where it is not reaching the original channel of the stream while they are not even using the water, as shown by the affidavit by Dave Sundberg. This water would run to people on Raft River who have decreed water rights. Therefore Joneses should be ordered to remove their earthen dam and let the water run down Raft River.

USING THE NATURAL STREAM COURSE AS A RESERVOIR

Joneses are violating Idaho code 42-3801, 3803, 3809 and 42-3810 by using the natural stream course as a reservoir without a permit, and installing a concrete check dam where they do not have a legal point of diversion, as shown in Exhibit No.3. They should be ordered to remove their dams and let the water go down Raft River.

SUMMARY

During the last two irrigation seasons Joneses have illegally pumped water from a reservoir which they constructed in the natural stream course of a Tributary to Raft River where they do not have an authorized point of diversion. They are irrigating ground which is not within

the place of use recommended by the Department and they are irrigating more acres than recommended. During the time when they are not irrigating they maintain the water impounded in a reservoir and are running it down a dry ditch so it does not reach the original channel of Raft River. This water could be used by people who have decreed water rights. They should be ordered to remove their dams and allow the water to go to Raft River so it can replenish the Raft River channel so it can reach the 1871 water right users in Malta.

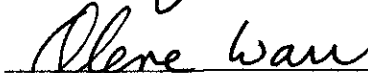
This motion does not waive or diminish the Objectors claim that the right does not exist. However until the court determines whether the recommended right exists or not, the claim should be governed by Raft River water district 43-B and be subject to the priorities of the Raft River water rights. Any use of this claim by Joneses injures the water users down stream on Raft River and has no relationship to the rights on Almo Creek.

Signed this 3rd ^{December} ~~Day of November~~ 2002.


NOLAN BRANCH


ROSCOE WARD


RODNEY HALL


OLENE WARR



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 24, 2002

William D. Jones and Son
% William D. Jones
PO Box 152
Almo, Idaho 83312

CERTIFIED MAIL

RE: Potential illegal water use

Dear Mr. Jones:

Our office has become aware of a new point of diversion on Almo Creek within or near SWSENE Section 32, T15S, R25E near the confluence with Raft River. It appears the diversion supplies water to lands covered by a right recently recommended in the SRBA as right 43-10356. One of our agents has viewed the new diversion and finds that no water right provides this site as a point of diversion. Please find enclosed maps depicting the recommendation of 43-10356 and another showing the location of the new pump.

During the recent 43-B Water District meeting the matter of the new pump was brought up by concerned Raft River waterusers who feel that the new pump may injure their water rights on Raft River.

Since the new diversion is not authorized under a recorded water right and its use may injure other valid rights your cooperation is sought in:

- identifying the water right that covers your development if our records are not correct.
- cease use of the pump.
- &/or obtain a transfer of a valid water right to cover your development.

Please respond to our office within 15 days of the date of this letter as to the status of your project.

Please note that to divert water in Idaho without a valid water right is illegal pursuant to §42-351, Idaho Code and subject to civil penalties outlined in §42-1701B, Idaho Code which provide for \$50 per 0.1 cfs per day up to a maximum penalty of \$50,000 per year.

Please note that by copy of this letter the water district on Almo Creek is being informed of the issue and will be directed to curtail use of the pump until such time as the point of diversion is

2

ROGER D. LING
BRENT T. ROBINSON

LING & ROBINSON
ATTORNEYS AT LAW
615 'H' STREET
P. O. BOX 396
RUPERT, IDAHO 83380-0396

AREA CODE 208
TELEPHONE 436-4717
FAX 436-6804

JASON D. WALKER
TIMOTHY J. SCHNEIDER
ASSOCIATES

May 7, 2002

RECEIVED
MAY 09 2002
Department of Water Resources
Southern Region

Allen D. Merritt, P.E.
Southern Region Manager
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

Re: Letter of January 24, 2002 to William D Jones and Son
on Point of Diversion for Water Right No. 43-10356

Dear Mr. Merritt:

In your letter of January 24, 2002 addressed to William D. Jones and Son, you raise the issue that William D. Jones and Son may be diverting water under Water Right No. 43-10356 at a location that is not the point of diversion recommended in the Director's Report for Water Right No. 43-10356. Subsequent to that letter, William D. Jones and Son filed an Application for Transfer, seeking to change the point of diversion to the location of its pump on Almo Creek. As you know, several Protests have been filed to that Application.

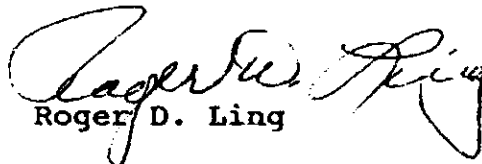
Since these events, I have been retained by William D. Jones and Rod Jones to review this water right and operation. From my investigation, it appears clear that water under Water Right No. 43-10356 is being diverted at the point of diversion identified in the Director's Recommendation for this water right. The water then flows down a man-made ditch used exclusively by William D. Jones and Son. At a point approximately two-thirds of the way from the point of diversion recommended, to the Jones property, the water is diverted out of the ditch and back to the Almo Creek channel and then reclaimed at the location of the Jones pump. This is consistent with §42-105, Idaho Code, allowing the use of natural channels to convey water to which a person may be entitled that was established by diversion and application to beneficial use. As this is not an exchange of water, it does not appear that an Application to Exchange Water is required.

It appears that the Application for Transfer to change the point of diversion may have been inadvertently made. In any event, in view of the fact that the Protests to that Application

Allen D. Merritt, P.E.
Department of Water Resources
May 7, 2002
Page 2

and the Objections filed to the Recommendations in the Director's Report contain identical issues, which is a challenge to whether or not the water right is valid, we have elected to pursue the SRBA subcase. I have enclosed a copy of the Note of Issue that has been filed with Special Master Dolan to whom this subcase has been assigned. After the validity of the water right has been established, we can then pursue the appropriate remedy for using the natural channel for the conveyance of the water diverted by William D. Jones and Son to the location of his pump installed for the purposes of irrigating the 28 acres described as the place of use in the Recommended Right. To avoid any confusion as to the issues at this time, I recommended that William D. Jones and Son cease using the natural channel of Almo Creek as a conveyance structure, and that the water be conveyed to their property in the existing ditch and if necessary, then conveyed to their pump in a ditch located on their property. I am advising you of this in the event there should be some objection to the operation of the pump by Joneses.

Very truly yours,


Roger D. Ling

RDL:jb

enc

pc: William D. Jones
Rod Jones

Tim Luke
Norm Young

Vikie Hancock

623



State of Idaho

DEPARTMENT OF WATER RESOURCES

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SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 6, 2002

David Ogren
Watermaster Water District 43-D
PO Box 194
Almo, ID 83312

Dave Sundberg
Watermaster Water District 43-B
PO Box 1
Malta, ID 83342

RE: William Jones 2002 use of 43-10356

Gentlemen:

Thank you for meeting with me on July 22nd at the Jones' diversion on Almo Creek. Thank you David for providing, via e-mail, the updated spreadsheet for your monitoring of the diversion (copy attached). As you know the meeting was called by me as a result of Mr. Sundberg's July 15th letter so that I might review in the field the physical aspects of the diversion. As you know Mr. Jones and his son were present during our field visit.

My take on the meeting was that all immediate issues appeared to be moot for the 2002 season. Diversion of Jones' during 2002 season was mostly during time when Raft River was dry in the reach at the confluence of Almo Creek. Diversion has ceased.

From my field visit and review of the spreadsheet I find or conclude that:

-On 7/22 no water was being pump by Jones. It was reported that no water had been pumped since around 7/7. It was stated by Mr. Jones that they were off for the remainder of the 2002 season.

-Almo Creek in the reach of the Jones diversion is not normally connected directly to Almo Creek's near Almo. It is more correct to say that the lower reach of Almo Creek derives its water, if any, from seeps from meadow land above which the upper reach of Almo Creek sinks. Only during high water are the Almo Creek reaches connected by surface flows.

-Jones diversion consists of an earthen dam filling the entire cross-section of the lower reach of Almo Creek which then directs all flow (except seepage under the dam) into the ditch flowing eastly to the Jones property. No headgate or control works are evident at the diversion.

-There has been constructed a 3' cipolletti weir above the earthen dam above the backwater to measure the flow to the ditch. The measurements of this weir are noted on Ogren's spreadsheet. (On 7/22 there was approximately 0.05' of head over the weir which indicates a small flow of 0.11 cfs into the ditch; however, the water sank before making it to the point where water would flow back into the creek.)

-There has been constructed another 3' cipolletti weir near the outfall of the ditch to Jones property where it dumps back into Almo Creek above the concrete check

dam in the creek at the site of the Jones' pump. The measurements of this weir are also noted on Ogren's spreadsheet.

- The pump has an automatic pressure shut-off switch.

- The bed of Almo Creek between the earthen diversion dam and the concrete check dam at the pump has been used as a storage pond. The pump diverts from this storage pond.

- It is evident from Ogren's record and statements of Mr. Jones that the pump has been routinely cycled and not continuously operated. For example the pond described above has been allowed to fill; then the pump turned on and while water was being placed in the pond from the ditch the diversion from the pond by the pump exceeded inflow and the storage volume was reduced until the pond emptied resulting in the pump losing pressure and automatically shutting off. This cycle was then repeated.

- The capacity of the pump as operated has been less than the recommended rate of flow for right 43-10356.

- The field that had been irrigated in 2002 is trapezoidal in shape. The northern edge is approximately 1880 feet long and the southern edge is approximately 1120 feet long. The width of the field is approximately 800 feet. The area being irrigated is approximately 28 acres. In squaring the field up some of the acres irrigated have recently been taken from brush but other acres under 43-10356 are not irrigated. This change appears to be no net increase in irrigated acres.

- According to Sundberg Raft River has been dry at the road crossing above Almo Creek since 5/17. According to Ogren Raft River has been dry at road crossing above Almo Creek since at least 6/3 or earlier.

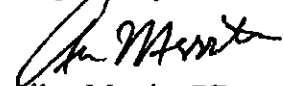
- On 7/22 I observed Raft River was dry at the road crossing above Almo Creek and at the road crossing above the narrows.

- Any call for this water by any person on Raft River since June 2002 would likely have been futile.

In reviewing the 7/15 Sundberg letter and the more recent 7/25 Sundberg letter the issues raised appear more appropriately to be issues that should be considered by the SRBA court in their objection process to right 43-10356 or subsequent administrative hearing to pending transfer 69665.

If you have questions please feel free to contact this office.

Respectfully,



Allen Merritt, PE
Southern Region Manager

Attachment

CC: Tim Luke – IDWR Water Management
William Jones

Roger Ling
Roscoe Ward

date	diversion	measurement re-diversion	re-diversion	cfs	consumption	miner's inches	plotment 43-10356	*+/-
5/20/2002			0.56	0.56	0.45	22.50	0.56	-0.11
5/21/2002			0.56	0.56	0.45	22.50	0.56	-0.11
5/22/2002			0.56	0.56	0.45	22.50	0.56	-0.11
5/23/2002			0.56	0.56	0.45	22.50	0.56	-0.11
5/24/2002			0.56	0.56	0.45	22.50	0.56	-0.11
5/25/2002			0.56	0.56	0.45	22.50	0.56	-0.11
5/26/2002			0.56	0.56	0.45	22.50	0.56	-0.11
5/27/2002			0.56	0.56	0.45	22.50	0.56	-0.11
5/28/2002			0.56	0.56	0.45	22.50	0.56	-0.11
5/29/2002			0.56	0.56	0.45	22.50	0.56	-0.11
5/30/2002			0.56	0.56	0.45	22.50	0.56	-0.11
5/31/2002			0.56	0.56	0.45	22.50	0.56	-0.11
6/1/2002			0.56	0.56	0.45	22.50	0.56	-0.11
6/2/2002			0.56	0.56	0.45	22.50	0.56	-0.11
6/3/2002			0.56	0.56	0.45	22.50	0.56	-0.11
6/4/2002			0.56	0.56	0.45	22.50	0.56	-0.11
6/5/2002		0.26	1.33	0.45	0.45	22.50	0.56	-0.11
6/6/2002		0.15	0.59	0.59	0.59	29.30	0.56	0.03
6/7/2002		0.14	0.52	0.52	0.52	26.00	0.56	-0.04
6/8/2002		0.14	0.52	0.52	0.52	26.00	0.56	-0.04
6/9/2002		0.13	0.47	0.00	0.00	0.00	0.56	-0.56
6/10/2002		0.12	0.42	0.42	0.42	21.00	0.56	-0.14
6/11/2002		0.12	0.42	0.34	0.34	17.20	0.56	-0.22
6/12/2002		0.09	0.27	0.32	0.32	15.77	0.56	-0.24
6/13/2002		0.10	0.32	0.29	0.29	14.33	0.56	-0.27
6/14/2002	0.11	0.10	0.32	0.27	0.27	13.38	0.56	-0.29
6/15/2002	0.08	0.08	0.22	0.00	0.00	0.00	0.56	-0.56
6/16/2002	0.08	0.08	0.22	0.00	0.00	0.00	0.56	-0.11
6/17/2002	0.08	0.08	0.22	0.45	0.45	22.46	0.56	-0.56
6/18/2002	0.08	0.07	0.17	0.00	0.00	0.00	0.56	-0.56
6/19/2002	0.08	0.08	0.22	0.43	0.43	21.50	0.56	-0.13
6/20/2002	0.07	0.07	0.17	0.00	0.00	0.00	0.56	-0.56
6/21/2002	0.08	0.08	0.22	0.43	0.43	21.50	0.56	-0.13
6/22/2002	0.07	0.07	0.17	0.00	0.00	0.00	0.56	-0.56
6/23/2002	0.08	0.08	0.22	0.00	0.00	0.00	0.56	-0.56
6/24/2002	0.07	0.07	0.17	0.41	0.41	20.54	0.56	-0.15
6/25/2002	0.06	0.06	0.10	0.40	0.40	20.07	0.56	-0.16
6/26/2002	0.06	0.06	0.10	0.36	0.36	18.16	0.56	-0.20
6/27/2002	0.06	0.06	0.10	0.00	0.00	0.00	0.56	-0.56
6/28/2002	0.06	0.06	0.10	0.32	0.32	16.24	0.56	-0.24
6/29/2002	0.05	0.04	0.08	0.00	0.00	0.00	0.56	-0.56
6/30/2002	0.06	0.03	0.05	0.00	0.00	0.00	0.56	-0.56
7/1/2002	0.06	0.03	0.05	0.00	0.00	0.00	0.56	-0.56
7/2/2002	0.06	0.03	0.05	0.00	0.00	0.00	0.56	-0.56
7/3/2002	0.06	0.03	0.05	0.00	0.00	0.00	0.56	-0.56
7/4/2002	0.06	0.03	0.05	0.00	0.00	0.00	0.56	-0.56



Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER
RIGHTS AND RECLAMATION
CHAPTER 1
APPROPRIATION OF WATER -- GENERAL
PROVISIONS

42-105. USE OF NATURAL WATERWAYS -- MEASUREMENT OF COMMINGLED WATER -- APPROVAL OF RIGHT TO EXCHANGE WATER. (1) The water that a person is entitled to divert by reason of a valid water right may be turned into the channel of a natural waterway and mingled with its water, and then reclaimed, but in reclaiming the water so mingled, the amount of water to which prior appropriators may be entitled shall not be diminished, and due allowance shall be made for loss by evaporation and seepage. The use of natural waterways to commingle and reclaim water shall be subject at all times to the supervision and control of the director of the department of water resources and shall be subject to the regulation of the watermaster within an established water district. The amounts of water turned into or diverted from all natural waterways are subject to the requirement of measurement and reporting.

(2) The water that a person is entitled to divert by reason of a valid water right, or water that a person is seeking to appropriate, may be exchanged for water under another water right, or for other water from the same or another source, as hereinafter provided

(a) If the applicant intends to exchange water the applicant is entitled to divert under an existing valid water right for any other water, approval of the exchange shall be obtained by filing an application under the provisions of section 42-240, Idaho Code;

(b) If the applicant proposes to exchange water that the applicant is seeking to appropriate, approval of the exchange shall be obtained by filing an application to appropriate water under section 42-202, Idaho Code. The proposed exchange shall be described in the application and the application shall be processed in accordance with the provisions of section 42-203A, Idaho Code. If the application seeks to exchange the water to be appropriated with water available under another water right, the application shall be accompanied by an agreement to exchange signed by the owner of the existing water right. An exchange with water under an existing water right cannot result in an enlargement in use of the existing right.

(3) An exchange of water hereafter made without the approval of the department of water resources as provided in this section shall be invalid. Nothing in this section shall affect the right a person may have or may obtain to turn water into a ditch or other artificial conveyance and reclaim the water.

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Available Reference:

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TITLE 42
IRRIGATION AND DRAINAGE -- WATER
RIGHTS AND RECLAMATION
CHAPTER 6
DISTRIBUTION OF WATER
AMONG APPROPRIATORS

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 26, 2001

William D. Jones and Son
PO Box 152
Almo, Idaho 83312

RE: Snake River Basin Adjudication (SRBA)
Claim 43-10356

Dear Bill and Rodney,

After our meeting on June 15th, I did take the time to review your claims again to see if there were any references in the old license files to irrigation from Almo Creek, etc. There were none, but I did notice an error that I made in the point of diversion for Almo Creek on my preliminary recommendation for that claim.

I believe that in making my preliminary recommendation I may have mistaken a note by former agent Frank Hitchcock when he spoke with you about possible point of diversion transfers for Raft River and Almo Creek in 1996. In reviewing my notes of meetings the three of us had in March 2000, I find the location of your claimed points of diversion for Almo Creek water in 1989 were in the SESE Section 30 and the NWNE Section 32. Almo Creek flows through the SESE Section 30, but not the NWNE Section 32, and a diversion there would be too far north of the strait east/west ditch you showed me on aerial photos as coming from the Almo Creek channels to your property.

Knowing the difficulty of identifying the legal descriptions of ground locations on the maps available to you in 1989, I visited the area last week, walked the ditches and channels and GPS'd the intersection of the strait ditch. I have corrected my recommendation to reflect that point along with the one in the SESE Section 30.

After driving by your property, other department personnel expressed concern to me about the new pumping installation and apparent new ground that was plowed this spring. It does look to me that you have expanded the irrigated acres to the north of the original ditchline, and obviously have replaced the portable pump you talked about with a permanent installation. Please be aware that you are limited to the number of acres irrigated as of 1987 and that you must apply for a transfer of point of diversion for the new pump.

I have also become aware of the omission of a condition that should have been put on the two ground water licenses 43-2479 and 43-2538. Since there were overlapping acres licensed under these rights in the mid-sixties, the two rights combined are limited to 245 acres from groundwater. This condition will appear on your recommendation to the SRBA court.

I have enclosed a copy of the GIS map and recommendation that shows the correct points of diversion for claim 43-10536. Please let me know if you have any questions.

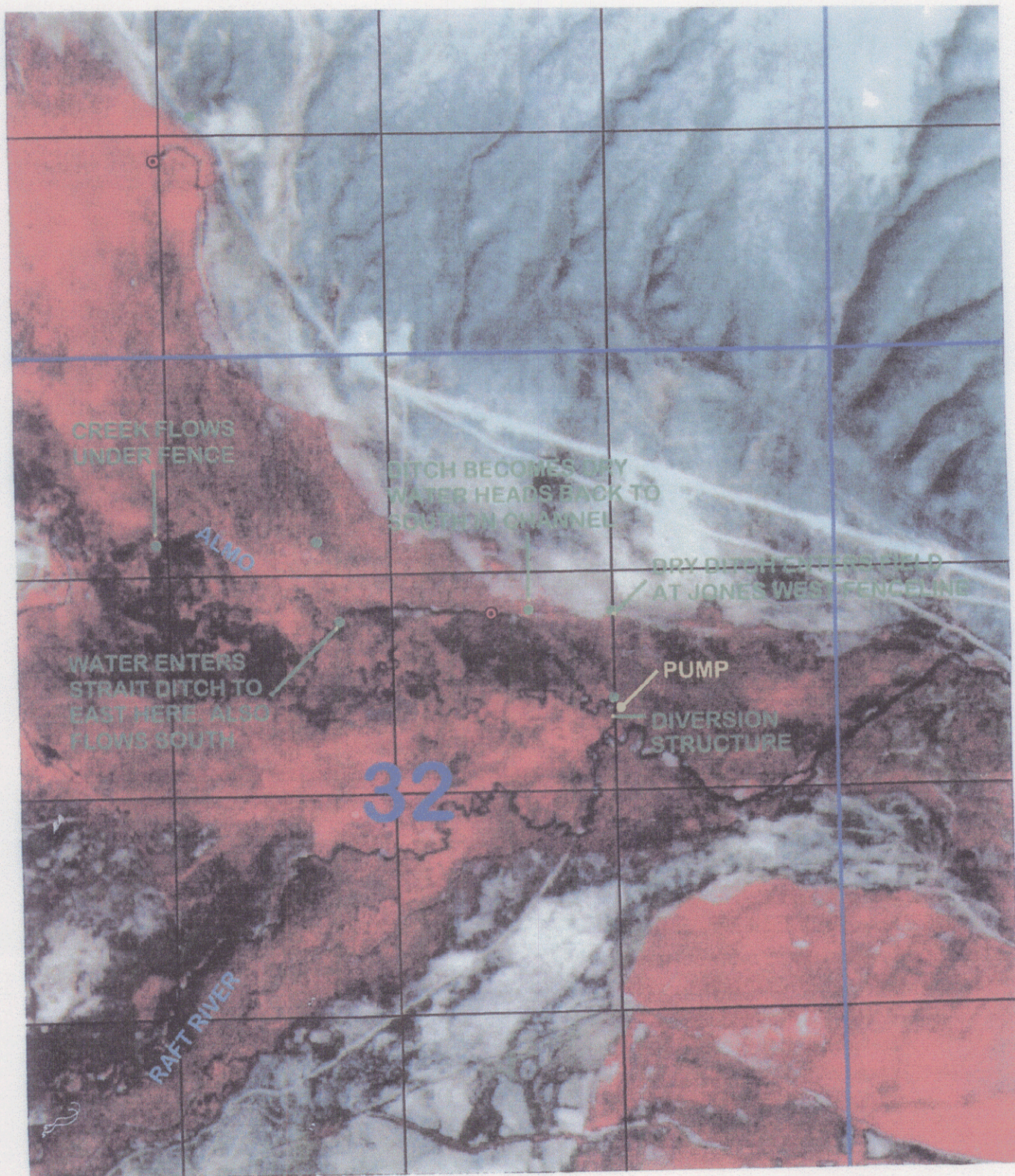
Sincerely,

Vikie Hancock
Sr. Water Resource Agent
Southern Regional Office, Twin Falls

FIELD NOTES

● GPS POINTS COLLECTED 6-20-2001

TWP 15S, RNG 25E



V HANCOCK Date:

1987/1988 NAPP PHOTOGRAPHY

XIV.

That Raft River is an inter-state stream arising in the Raft River Mountains, finding 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. At those creeks in Box Elder County, Utah, known as Basin Creek, Mahogany Creek, Ineson Creek, George Creek, Oliver Creek, together with the following named creeks in Cassia County, Idaho, known as Long Creek, Short Creek, Pole Creek, White Creek, Cottonwood Creek, Kane Creek, Nibs Creek, Darby Creek, Coe Creek, Widow 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, Blackfoot 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 Fork 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, the 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 of 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 creek 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 on said stream.

XVII.

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Also springs on above land.

94-Apr. 1	3.34	s.f.	To be diverted from Cassia Creek
85-Apr. 30	1.2	s.f.	To be diverted from Mahogany Springs, Blacksmith Fork and Summitt Creek, for the irrigation of $E\frac{1}{2}NW\frac{1}{4}$, Sec. 11, $NW\frac{1}{4}$, Sec. 14, Twp. 13, S. R. 25 E. B. M.
as. Van Kirk	1.3	s.f.	To be diverted from Green Canyon Creek
80-Apr. 30	.5	s.f.	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 306 rods, thence West 80 rods, thence North 306 rods, thence East 80 rods to place of beginning, except road rights of way.
C. Vosburg	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.
21-June 18			

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 whatever 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	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.
879-Apr. 15			
Henry R. Cahoon	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.
879-Apr. 30			

law of John Lowe, deceased.

180-Apr. 1	3.2	s.f.	To be diverted from Grape Creek for the
190-Apr. 1	.8	s.f.	irrigation of $SW\frac{1}{4}NE\frac{1}{4}, NE\frac{1}{4}SW\frac{1}{4}, W\frac{1}{2}SE\frac{1}{4}, SE\frac{1}{4}SW\frac{1}{4}$,
			Sec. 6, Twp. 15 S. R. 25 E. B. M.

John C. Ward and

Allie Ward

180-Apr. 1	3.2	s.f.	To be diverted from Grape Creek for the
			irrigation of $NW\frac{1}{4}NE\frac{1}{4}, SW\frac{1}{4}NE\frac{1}{4}, NE\frac{1}{4}NW\frac{1}{4}, SE\frac{1}{4}NW\frac{1}{4}$,
			Sec. 7, Twp. 15 S.R. 25 E.B.M.

Evie Ward and

Lina Ward

180-Apr. 1	3.2	s.f.	To be diverted from Grape Creek for the
			irrigation of $NE\frac{1}{4}NW\frac{1}{4}$, Sec. 18, Lot 3, $NE\frac{1}{4}$
			$SW\frac{1}{4}, SE\frac{1}{4}SW\frac{1}{4}$, Sec. 7, Twp. 15 S.R. 25 E.B.M.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of the parties hereto, both plaintiff and defendants, cross-complainants and interveners, together with their heirs, successors, assigns, agents, servants and employees, are hereby severally particularly restrained and enjoined from using, attempting to use, diverting or attempting to divert, any of the waters of said Raft River or its tributaries as hereinbefore defined and set out in any manner except as hereinbefore provided and set out and in strict accordance with the terms of this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That each of the parties hereto, both plaintiff and defendants, Cross-Complainants and interveners shall pay their own costs expended in this cause, such costs being filing fees, marshal's fees, publication fees, witness fees and reporter's fees. That the cost of securing maps, blue prints, necessary expenses of the commissioner, including stenographer's expenses incurred in the drawing of this decree, be, and hereby are, fixed at the sum of \$2132.90, of which sum the following named parties shall pay the amount hereinafter specified, and that the commissioner, W. G. Bissell, be, and hereby is adjudged to have a lien upon the property of each of the several parties in this decree described for the amount of costs hereby taxed against each of said parties, viz:

Libion-Idaho Land Company	\$ 262.90
Clarence Bateman and Ella Bateman	19.80
Edwin Barker and Teggie Barker	4.40
Alfred H. Barker and the other heirs at	
law of Brigham O. Barker, deceased.	11.00
Amuel H. Barker and Susie Barker	11.00
Emmer W. Ball	17.60
Ecil Beecher	1.10
U. Beecher	3.85
F. Beecher and Sina Beecher	5.50
Clifford Beecher and Hazel Beecher	12.10
Adie Beecher	16.50
Henry E. Gibler	11.00
R. Booth and Maggie Booth	8.80
R. Booth and Jennie Booth	8.80
Joshua B. Brown	8.80
Archie Bulware	4.40
Phillip Burrows	17.60
Art J. Cottle and Ethel Cottle	2.20
Archie Maria Darrington	4.40
Edward Darrington	3.84

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NOTE TO FILE

From: Vikie Hancock

3/8/00

Regarding: Claim number: Various - William Jones

William and Rodney Jones came into the office 3-8-2000 to discuss their adjudication claims for irrigation, to discuss a possible transfer of points of diversion and to file stockwater claims on Raft River.

An instream stockwater claim was filed for the Raft River as it flows through their property. They included a portion of river in the NESWSW Section 5, T16S, R25E. The USGS quadrangle maps does not show the river going through that corner of Section 5, but the claimants state that the river braids and does indeed flow through there. 1987 NAPP photos substantiate this claim.

The claimants stated that they had been having a hard time getting water out of Raft River at the point of diversion that they had historically used in the SWSW Section 32 and wished to move it to a point farther downstream where they could put in a pump. I told them that I didn't see that there would be a problem with that but, that it would require an administrative transfer through our Allocations Bureau. This would affect claims A43-00184 and -00185 which are based on old decreed water rights to Raft River. They also wished to move the point of diversion on Almo Creek downstream to a place just above the Raft River and pump from there. This would effect Beneficial Use claim A43-10356. I advised them that, at this point in the Adjudication process, it may be best to hold off on the p/d transfers until the partial decree had been issued, since a transfer at this late date would possibly hold up the decree. I said that my SRBA recommendation would reflect the rights as filed in 1987. They said that they had actually already moved the points of diversion but had only used portable pumps so far. I said that they would need to get the changes made to their system post 1987 approved by Allocations at some point.

A discussion of their Adjudication claims went as follows:

A43-10356 - BU claim on Almo Creek. Priority date 4-30-1879.

I told them that the priority date would need to be advanced at least until the day after the Jobe Adams Decree in October 1928. We went over the fact that, subsequent to the date of the deed they submitted showing conveyance of 160 inches of water from Almo Creek

and Raft River, two separate decrees had been issued without including the use of Almo Creek water on their place of use. I said that this was good evidence that their use of water from Almo Creek began sometime after 1928, especially since William's grandparents were included in the Jobe Adams and decreed water from Raft River. I told them that to validate their claim they needed some proof of water use beginning before 1971 and after 1928. They were very aware of the priority dates upstream on Almo Creek and where they could find the Decree filed in the Cassia County Courthouse. I explained that an affidavit from a party that had no interest in their property would be acceptable. Rodney asked about his grandmother, who is in her 90's. I said that, since this was a possible court proceeding, I would want to have some corroborating evidence in the file. Since they only used Almo Creek water on the north side of the river, I suggested ASCS photos. In discussing this claim we also found that the place of use was incorrect as originally filed. The place of use for the Almo Creek water should have been filed in the SENE Section 32 and SWNW, NWSW, NESW Section 33, T15S, R25E. No one knew why there had been that much of an error, but it does make more sense. They discussed that the two points of diversion actually were on Almo Creek and on the lateral. I said that a point of diversion on a lateral said "wastewater" to me. I further said that the advancement of the priority date would probably not, in reality, affect their use of Almo Creek since they weren't now a permittee recognized by the District 43D watermaster and were already being affected by all the prior rights on the creek.

A43-04043

ask for copy what the SBA recommendation like for
Statutory claim on George Creek - claimed priority 1920. *this found*

I told the Jones's that this claim had the same problem as their claim to Almo Creek, in that George Creek was specifically included in the Jobe Adams but that their use was not found. I said that once again they needed to provide proof of priority after 1928 and before 1971. I reminded them that, at the time they filed the Stat Claim, there were people upstream on George Creek and downstream on Raft River that protested their right to use any water from George Creek. Rodney *is time*
showed me the ditch and place of use for George Creek and they both *prohib*
said that they hardly ever got any water down that far. *over 45'* I told them that they could understand why people downstream on Raft River might not like them interfering with the contributing flow of one of the tribs, even during high water.

A43-02538 and A43-02479 - two licenses for Ground water

We looked at these claims and verified the points of diversion. I told them that it looked like they had moved the place of use some, but that they were OK as it was prior to 1987, and that they would be limited to the number of acres and amount of water licensed. They showed me a place that they now had a pivot. They said that the stackward I had not