

RECEIVED

JAN 24 2003

Department of Water Resources

Roscoe B. Ward
P. O. Box 108
Almo, Idaho 83312
Telephone: (208) 824-5591
Facsimile: (208) 824-5591

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	)	ORDER ON
	)	JOINT MOTION FOR
SUBCASE NO. 43-10356	)	INTERIM ADMINISTRATION

On December 3rd, 2002 the Objectors, Nolan K. Branch, Rodney Hall, Roscoe Ward and Olene Warr filed a JOINT MOTION FOR INTERIM ADMINISTRATIVE ORDER. The Claimants, William D. Jones and Son, filed an Objection to the Joint Motion on January 9th, 2003. The Objection offered no supporting Facts, Documents or Arguments. The Court, having reviewed all of the Arguments and Documents which accompanied the Joint Motion hereby orders as follows;

FINDINGS OF FACT

1. During the irrigation season of 2001 and 2002 William D. Jones and Son dammed the water at the Junction of Almo Creek and Raft River, installed a pump and pumped the water into a sprinkler system without a legal point of diversion where the dam and pump were installed. The

natural channel of Almo Creek was being used as a reservoir which stored the water for several days between pumping.

2. Joneses do not have any permit to use this stream channel as a reservoir.

3. On January 24th, 2002 Joneses were ordered by Idaho Department of Water Resources to cease the use of the pump and to not divert water from that point of diversion.

4. Joneses continued to pump water from the reservoir which they had created in the channel of Almo Creek. Joneses's Attorney, Roger Ling, told them to cease using the natural channel of Almo Creek as a conveyance structure.

5. Joneses continued to pump from the reservoir which they created in the channel of Almo Creek until July 6th, 2002.

6. Idaho Department of Water Resources have told Joneses to limit their irrigation to the acres irrigated in 1987. However, Joneses irrigated new ground which is not listed in their place of use which was recommended by IDWR.

7. The water which is being pumped by Joneses is a natural Tributary to Raft River and is not connected to the Almo Creek water which is Decreed to water District 43-D, and does not affect any water rights in District 43-D. The water springs up around the recommended point of diversion North of the natural channel of Almo Creek.

8. Certain quantities of water from Almo Creek have been decreed to specific parcels of land and set apart as a separate water district which is Water District 43-D. The water claimed by Joneses in Claim No. 43-10356 is not included in Water District 43-D and does not affect 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 area where Almo Creek is decreed to be used.

4. The water being claimed in Claim No. 43-10356 is a Tributary to Raft River and does not affect the water rights which are decreed to Almo Creek Water District 43-D, therefore, Claim No. 43-10356 should be administered by Raft River Water District 43-B.

5. William D. Jones and Son have no right to impound water behind their earthen dam outside of the irrigation season.

6. Joneses have no right to irrigate ground under Claim No. 43-10356 which is not listed in their recommended Place of use for that claim.

7. The Department of Water Resources inadvertently recommended Claim No. 43-10356 as part of Water District 43-D, overlooking the fact that the water claimed does not contribute to or otherwise affect the waters which are decreed to District 43-D, but is in fact a tributary to Raft River Water District 43-B.

8. Idaho Code 18-4302 prohibits running water down a dry channel and not letting it go to the original channel of Raft River when other users need the water for irrigation.

ORDER

It is therefore ordered, adjudged and decreed that the Court will issue an Interim Administrative Order as follows:

1. That for the year 2003 Claim No. 43-10356 will be administered by Water District 43-B as a Tributary to Raft River and will be subject to the Senior Water Rights on Raft River.
2. William D. Jones and Son are enjoined from using the pump at the Junction of Almo Creek and Raft River.
3. William D. Jones and Son will immediately remove the earthen dam and allow the water to run to Raft River until such time as Senior Water Rights on Raft River are satisfied and water is available to be used by Joneses.
4. That Joneses will not use Claim No. 43-10356 to irrigate any ground which is not in the recommended place of use for that claim.
5. That nothing in this Order will be construed or used as evidence to support or prove the existence or non existence of Claim No. 43-10356.

SIGNED this ____ day of January, 2003

Judge of the District Court

RECEIVED

JAN 24 2003

Department of Water Resources

Roscoe B. Ward
P. O. Box 108
Almo, Idaho 83312
Telephone: (208) 824-5591
Facsimile: (208) 824-5591

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	)	REPLY TO CLAIMANTS
	)	OBJECTION TO JOINT MOTION FOR
SUBCASE NO. 43-10356	)	INTERIM ADMINISTRATION

On the 3rd day of December, 2002, the Objectors filed a Joint Motion For Interim Administrative Order. On January 9th, 2003, the Claimants Objected to the Motion but did not present any Facts, Documents or Argument to support their Objection.

As shown in the Memorandum For The Joint Motion, most of the water on Raft River runs during or before May and the trial date will not be until the end of May. Meanwhile, Joneses are illegally impounding water behind their earthen dam in violation of 42-3801, 3803, 3809 and 42-3810. If they are allowed to continue impounding the water or using the water for irrigation purposes they will interfere and prevent the water from going down Raft River to the Water Rights of the Objectors. At the present time the water is not reaching the diversion points of the Objectors Olene Warr, Nolan K. Branch and Rodney Hall with Priority of 1871 and 1883.

If Joneses release the water which they have impounded behind their earthen dam the water will run down Raft River channel and reach the Objectors diversion points. If the water does not reach the Objectors diversion points it may be used by later Priority Water Rights which are up stream. If the up stream water users start taking the water in the Spring then it will be difficult to determine whether the water could be made to reach the 1871 Water Rights at a later time even if the river does increase its flow. It is several miles from Reid Stewart's 1884 diversion point to Olene Warr's 1871 diversion point. If Stewart is allowed to dry up the river because of a futile call by Warrs the water will probably not be allowed to go to Warrs again because it will be so difficult to soak the channel for that distance.

For this reason it is necessary that the Court order Joneses to remove their illegal dam and allow the water to flow down Raft River channel and soak up the channel so it will be available to the 1871 Raft River Water Rights in April.

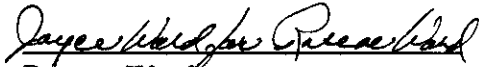
It is important for the water to be running down Raft River "for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality" as specified in Idaho Code 42-3801.

Therefore the Objectors request that the Court sign the attached PROPOSED ORDER. In the alternative, the Objectors request a Hearing at the earliest date available for the Court. The Claimants have already requested a Hearing

Signed this 23 rd day of January, 2003.

A handwritten signature in cursive script, appearing to read "Nolan K. Branch", written over a horizontal line.

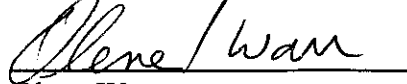
Nolan K. Branch

A handwritten signature in cursive script, appearing to read "Roscoe Ward", written over a horizontal line.

Roscoe Ward

A handwritten signature in cursive script, appearing to read "Rodney Hall", written over a horizontal line.

Rodney Hall

A handwritten signature in cursive script, appearing to read "Olene Warr", written over a horizontal line.

Olene Warr

CERTIFICATE OF MAILING

I hereby certify that on the 23RD of January, 2003, I mailed copies of this REPLY TO CLAIMANTS OBJECTION TO JOINT MOTION FOR INTERIM ADMINISTRATIVE ORDER and PROPOSED ORDER to the following:

SRBA Court
District Court
253 3RD Avenue North
Twin Falls, Idaho 83301

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

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

Roger D. Ling
LING & ROBINSON
Attorneys At Law
615 'H' Street
P. O. Box 396
Rupert, Idaho 83350-0396

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

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

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

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

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


Roscoe Ward