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Department of Water Resources

Roscoe B. Ward
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Almo, Idaho 83312
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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	)	REPLY TO MEMORANDUM IN
	)	OPPOSITION TO OBJECTORS' JOINT
SUBCASE NO. 43-10356	)	MOTION FOR INTERIM
		ADMINISTRATIVE ORDER

COMES NOW the Objectors Roscoe Ward, Nolan Branch, Olene Warr, and Rodney Hall (hereinafter collectively "objectors") and respectfully submits this REPLY TO CLAIMANT'S MEMORANDUM IN OPPOSITION TO OBJECTORS JOINT MOTION FOR INTERIM ADMINISTRATIVE ORDER.

BACKGROUND

The Objectors Roscoe Ward, Nolan Branch, Olene Warr, and Rodney Hall (hereinafter collectively "Objectors") to water right number 43-10356 have filed a Motion for Interim Administration and have lodged a Proposed Order with the Court. On February 11th, 2003 the Court held a hearing to identify parties who may be adversely affected by signing the Proposed Order. A.E. and Michael Nicholson, 805 3rd Street, Rupert, Idaho 83350, the claimants of 43-

04173 for which IDWR described one of the sources as Circle Creek, tributary to Raft River was identified by IDWR as being potentially affected in an adverse manner by the signing of the Proposed Order. Although Circle Creek has no relationship to either Raft River or Almo Creek and Nicholsons do not make any claim to Raft River or Almo Creek, IDWR for some reason recommended the Circle Creek right as being potentially adversely affected. Since Nicholsons have not filed any claim to either Raft River or Almo creek, the recommendation was improper under I.C. 42-1417. Both the Claimants and the Objectors objected to embroiling Nicholsons in this issue. However, to comply with the Court's decision, a copy of the motion, the Claimant's objection and the proposed order was sent to Nicholsons.

At the hearing IDWR and the Claimants, William D. Jones and Son, (hereinafter "Jones") did not give any reasons for disputing the Proposed Order, and the Objectors attempted to identify which issues were in dispute and the Claimant's Attorney said he was not familiar with the Proposed Order. IDWR said that they didn't feel that they needed to identify which issues they were disputing.

The Court asked IDWR and the Claimant's Attorney to send a brief to the Objectors identifying which issues they intend to dispute so that the issues can be narrowed down and not waste time in preparation for the Hearing.

IDWR Attorney, Candice McHugh wrote a letter saying that IDWR does not object to the Interim Order, as shown on Exhibit A. On March 14, 2003, the Director submitted their
RECOMMENDATION OF THE IDAHO DEPARTMENT OF WATER RESOURCES FOR

INTERIM ADMINISTRATION FOR SUBCASE NO. 43-10356 signed by Vicki Hancock. The document starts out with an INTRODUCTION, PROCEDURAL BACKGROUND and then DISCUSSION. In the first paragraph of the DISCUSSION, it says "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 **allegedly** joins Raft River".

At the bottom of the second page of the same document it says "The Department is aware that the claimant of water right 43-10356 has in recent years changed his delivery system to include a concrete structure located across the alleged natural channel of Almo Creek in Section 32 NESWSE. (See 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 recommends 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**".

In reality the last diversion point, which dams off Almo Creek entirely, is the Sylvia Knight point of diversion more than a mile to the North West of Joneses' recommended point of diversion. No water runs in Almo Creek channel below that point. All of the water that Joneses have been pumping springs up within one hundred yards or so of their recommended point of diversion. Therefore even if Joneses did pump water from a place further North it would still be

spring water and therefore they would not be allowed to pump it under the March 14th, 2003 Recommendation. All of this water would naturally run into Raft River.

The Objectors received from the Claimant, William D. Jones and Son (hereinafter "Jones") a MEMORANDUM IN OPPOSITION TO OBJECTORS' JOINT MOTION FOR INTERIM ADMINISTRATION ORDER. The MEMORANDUM had eight numbered pages:

Page 1. The only way that water right number 43-10356 was acquired under state law is that it was claimed as a beneficial use claim. The claim was submitted for objection to the Almo Creek water users, who did not object for the simple reason that the claim does not have any effect or potential relationship to their rights. The claim was improperly recommended because it was not submitted for objection to the users who are in fact adversely affected, namely, Raft River water users.

Page 2. When the claim was made available to the Raft River water users they objected on grounds, among other things, that the water is being diverted directly from the Raft River water supply. The predecessors in interest for the ground and water in question were parties to the Jobe Adams decree and were ordered by the decree to not divert any water except that which is specifically described in the decree. Joneses are claiming that their Grandfather went right out and started taking water contrary to the decree. Until 2002 Joneses have never participated in Almo Creek Water District 43D. They have never reported any diversion to Water District 43D or paid any assessment.

Page 4. Joneses refused to obey Allen Merritt's Order in February 2002 when he told

them to not use the pump. They demonstrated their contempt for the law by turning their pump on at the first opportunity. Now their attorney is saying that they may not respect this order if it is signed because they don't believe the Court has Jurisdiction. The Objectors will respect the Court's Order.

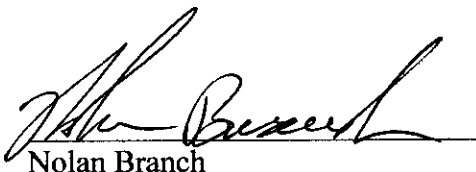
Page 5. Both the Motion and the proposed Order specify that nothing in them will be used as evidence to prove or disprove the existence of Claim 43-10356. Mr. Walker misrepresents both the Motion and the proposed Order by saying that the Objectors "apparently recognizing that the water right does in fact exist".

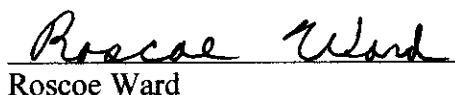
Page 6. The court can judge whether the Objectors or Mr. Walker interpret the decree properly and the Objectors will respectfully accept the Judges decision. Mr. Walker says "the water right at issue has its source in Almo Creek.". The fact of the matter is the water springs up a mile or so East of the end of Almo Creek and some of it is obviously coming from Jim Sage Mountain to the North. Even if the water were all coming from Almo Creek, Idaho Code 42-604 says 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." The water that Joneses are claiming springs up around the recommended point of diversion and runs directly into Raft River and has no effect whatsoever on Almo Creek and therefore it should be Raft River Water District 43 B. The Objectors are not trying to 'highjack' this water right, they are only trying to correct a mistake.

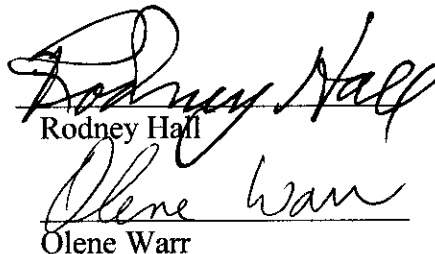
Page 8. Joneses intentionally violated the law as explained to them by Allen Merritt when he ordered them to not use the pump. They are still impounding water which would naturally run into Raft River if they removed the earthen dam. There is no way to prevent water from going into the gigantic "ditch" or anyway to control the amount of water which goes into the "ditch" and therefore there is no legal diversion point. The measuring device at the West end of the gigantic "ditch" does not measure the water which is coming into it from springs on the North side of the "ditch". This gigantic "ditch" is more of a lake than a ditch and due to the sandy nature of the soil is sinking more water than is being used. Joneses irrigated in 2001 and 2002 ground which is not in the recommended place of use. It is alkali ground and did not even produce a harvestable crop even though they watered it and they have no right to irrigate new ground while people with senior water rights went without water and therefore this Order should be signed and enforced.

The majority of the Findings Of Fact and Conclusions Of Law in the proposed Order were have not been disputed by either the Claimants or IDWR.

Signed this 16th day of March, 2003


Nolan Branch


Roscoe Ward


Rodney Hall

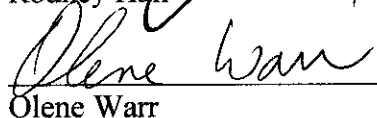

Olene Warr

EXHIBIT No. 1



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

February 20, 2003

Roscoc Ward
PO Box 108
Almo, ID 83312

Re: SRBA Subcase No. 43-10356

Dear Mr. Ward:

The Idaho Department of Water Resources has received your Request to Identify Issues filed with the SRBA Court on February 19, 2003. Because the Department is not a party in the SRBA as provided in Idaho Code § 42-1401B, the Department has not objected to the Motion for Interim Administration which was filed on December 5, 2002. The SRBA Court will determine whether granting the motion is appropriate in this case. To that end, the Court has requested that IDWR provide a Report that details the Department's recommendation regarding interim administration of the Jones' water right no. 43-10356. Order Setting Dates, February 11, 2003.

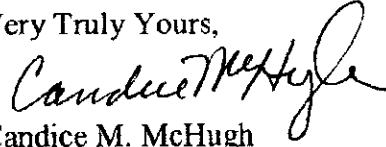
Although the Department's report detailing its recommendation for interim administration is not completed yet because it is not due until March 14, 2003, that report will generally provide information about whether interim administration of the Jones' water right is appropriate and possible, what that administration would entail and what the parties can expect IDWR to advise the Watermaster to do this irrigation season with regards to that water right. As was discussed at the status conference on February 11, 2003, the Department's position is generally that interim administration of the Jones' water right pursuant to the **current** director's report is **not** unreasonable and the Department's Report will discuss in further detail what that administration would entail if the Court decides to grant the motion.

Additionally, the Department will provide maps at the February 28, 2003 settlement conference in Burley which may help answer some of your questions and claims files pertinent to this subcase are also available for review. Additionally, you are welcome to review records or files at the Southern Region office; you can call that office at (208) 736-3033 to make arrangements to review the Department's public files.

Ward
February 20, 2003
Page 2

If you have further questions regarding this matter, please contact me at (208) 327-7900.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Candice M. McHugh". The signature is fluid and cursive, with the first name "Candice" being more prominent.

Candice M. McHugh
Deputy Attorney General, IDWR

cc: Vickie Hancock
SM Dolan
Roger Ling
Rodney Hall
Nolan Branch
Olene Warr
Clark Ward
William T. Goodman

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of March 2003, I mailed copies of this REPLY TO MEMORANDUM IN OPPOSITION TO OBJECTORS' JOINT MOTION FOR INTERIM ADMINISTRATIVE 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
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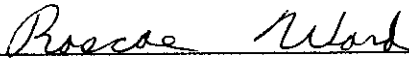
Nolan K. Branch
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Warr Brothers
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HC 61 Box 1560
Malta, Idaho 83342

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



Roscoe Ward