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Department of Water Resources

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9 William D. Jones and Son

10 **IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE**
11 **STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

12 In Re SRBA) Subcase No. 43-10356
13 Case No. 39576,) **MEMORANDUM IN OPPOSITION TO**
14) **OBJECTORS' JOINT MOTION FOR**
15) **INTERIM ADMINISTRATION ORDER**

16 COMES NOW the Claimant, William D. Jones and Son
17 (hereinafter "Jones"), by and through Jason D. Walker of the firm
18 Ling & Robinson, and respectfully submits this *Memorandum in*
19 *Opposition to Objectors' Joint Motion for Interim Administration*
20 *Order* in which Objectors Roscoe Ward, Nolan Branch, Olene Warr, and
21 Rodney Hall (hereinafter collectively "Objectors") seek interim
22 administration of Subcase No. 43-10356 claimed by Jones.

23 **BACKGROUND**

24 In September of 2001, the Director of Idaho Department of
25 Water Resources (hereinafter "IDWR") submitted and recommended
26 Water Right No. 43-10356 for William D. Jones and Son. The
27 Recommendation was for an irrigation water right acquired under

28 MEMORANDUM IN OPPOSITION TO OBJECTORS'
JOINT MOTION FOR INTERIM ADMINISTRATION ORDER - 1

LING & ROBINSON

ATTORNEYS AT LAW

RUPERT, IDAHO 83350-0396

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3 state law of .56 cfs from Almo Creek. The general provisions of
4 the Director's Report recommended the administration of Almo Creek
5 separately from the Raft River water system. This is in accordance
6 with the Albion-Idaho Land Company v. Jobe Adams Decree No. 992
7 entered in the United States District Court in and for the District
8 of Idaho, Southern Division (hereinafter "Jobe Adams Decree")

9 In January and February of 2002, the Objectors each filed
10 an Objection claiming that the Jones water right should not exist.
11 Jones timely filed Responses to the Objections. On December 5,
12 2002, the Objectors filed a *Joint Motion for Interim Administration*
13 of Subcase No. 43-10356. On January 10, 2003, claimant objected to
14 the *Joint Motion for Interim Administration*. On January 22, 2003,
15 the Special Master sent a letter to the parties advising Objectors
16 of their obligation to provide notice to "each claimant of water
17 from the system or portion thereof that could reasonably be
18 determined to be adversely affected by entry of the Order [of
19 interim administration]." The Objectors then filed a *Reply to the*
20 *claimant's Objection to Joint Motion for Interim Administration*
21 along with a notice to submit for a decision. In an effort to keep
22 matters flowing within the course of the established law, the
23 Special Master ordered a hearing on the procedural issue of
24 identifying all adversely affected claimant since the Objectors had
25 failed to notify or designate all who could reasonably be
26 determined to be adversely affected by entry of the Order. The

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3 Special Master's Order further indicated that a subsequent hearing
4 would be held after proper notice on the issue of whether or not an
5 interim order is proper.

6 At the hearing, the Special Master adopted the
7 Department's identification of all claimants with water rights from
8 this system or portion thereof that they determined could be
9 adversely affected by entry of the Order for Interim
10 Administration. Objections were raised by the claimant as to
11 jurisdiction and to the designation of adversely affected parties.
12 The Special Master then set a subsequent hearing on whether or not
13 interim administration of Water Right No. 43-10356 is appropriate.

14 ARGUMENT

15 1. Jurisdiction.

16 The first question is whether this matter is properly in
17 front of the Special Master. Idaho Code §42-1417 sets forth a
18 procedure for interim administration during the pendency of a
19 general adjudication. The authority to enter an interim order for
20 administration of water rights under Chapter 6, Title 42, Idaho
21 Code, rests solely with the district court. I.C. §42-1417.
22 However, the district court may refer the matter to a special
23 master pursuant to I.R.C.P. 53 and I.C. §42-1422.

24 At the hearing on the procedural issue of notification,
25 the claimant raised the issue of lack of jurisdiction. The Special
26 Master has determined that he has jurisdiction in this matter

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3 because the District Court had already referred the subcase to him
4 regarding the objections. While Jones respectfully disagrees and
5 does not wish to waive the right to contest jurisdiction, for the
6 purposes of this memorandum, it will be assumed that the Special
7 Master has jurisdiction to make a recommendation to the District
8 Court regarding an *Order of Interim Administration*.

9 2. Notice.

10 The Special Master at the procedural hearing held
11 February 11, 2003 adopted IDWR's designation of adversely affected
12 parties over the objection of the claimant. For the purposes of
13 this memorandum, it is assumed that notice has been properly given
14 to all claimants who could be adversely impacted by the proposed
15 order. Nevertheless, Jones is not waiving his right to be heard on
16 this issue.

17 3. Interim administration as prayed for by the
18 Objectors is improper.

19 The issue before the Special Master is whether interim
20 administration of water rights in accordance with the Director's
21 Report or as the Report is modified by the court order and in
22 accordance with any particular partial decrees is reasonably
23 necessary to protect senior water rights. More particularly, the
24 question is whether or not the interim administration requested in
25 this matter is proper. Clearly, based on the undisputed facts and
26 as a matter of law, the *Order for Interim Administration* as
27 requested by the Objectors is improper and not reasonably necessary

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3 to protect senior water rights.

4 It is axiomatic that the ongoing proceedings dealing with
5 Subcase No. 43-10356 are intended to resolve issues relating to the
6 objections raised to the Director's Report. The scope and purpose
7 of the SRBA is to allow the fair and expeditious resolution of all
8 claims or issues in the SRBA. Interim administration of this water
9 right is a new issue with respect to this subcase. As the Special
10 Master will recall, the objections initially filed in this case
11 were that the water rights should not exist. The Special Master
12 was then appointed to resolve these objections. Now the Objectors
13 have changed course, apparently recognizing that the water right
14 does in fact exist, but now seeking interim administration of this
15 right and attempting to hijack the right into the Raft River water
16 district for administration.

17 Idaho Code §42-1417 dealing with interim administration
18 of water rights provides that an order for interim administration
19 may be ordered upon a motion by a party and after notice to all
20 parties reasonably determined to be adversely affected by the entry
21 of the order. I.C. §42-1412. But, such an order may only be
22 entered if the court can make a determination, after a hearing,
23 that interim administration of the water rights in accordance with
24 the report or as the report as modified by the court's order and in
25 accordance with any partial decrees, is reasonably necessary to
26 protect senior water rights. I.C. §42-1417.

Interim administration of Water Right No. 43-10356 is not proper because the Objectors' rights cannot be injured by claimant's lawful use of its right as recommended by the Department of Water Resources. As set forth in the facts above, the water right at issue has its source in Almo Creek. Almo Creek was decreed in the Jobe Adams Decree as a separate and distinct water source. In paragraph XV of the Jobe Adams Decree, the court held 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, . . . 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.

See Job Adams Decree, paragraph XV (emphasis added). The court further held as follows:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That Almo Creek and its tributaries . . . do not contribute to the supply of the water users out of Raft River and its tributaries in the irrigation of 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 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.

See Job Adams Decree, p. 30 (emphasis added). Similarly, the Basin

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3 43 General Provisions submitted by the Director of the Idaho
4 Department of Water Resources with its Recommendation provides that
5 Almo Creek shall be administered separately from all other water
6 rights in Basin 43 in accordance with prior appropriation doctrine
7 as established by Idaho law. Water Right No. 43-10356 is expressly
8 included in the Almo Creek exception.

9 Clearly, in light of the facts in this matter, an order
10 for interim administration of Subcase No. 43-10356 is not
11 reasonably necessary to protect senior water rights or any of the
12 rights of the Objectors. To require the Department to administer
13 the water rights in accordance with the report and in accordance
14 with any partial decrees will do nothing to protect the water
15 rights on Raft River. Subcase No. 43-10356 has been recommended
16 with a source of Almo Creek, which the Director has recommended
17 should be administered separately from Raft River. This is
18 consistent with the Jobe Adams Decree as set forth above. Use of
19 the waters of Almo Creek in accordance with the priorities set
20 forth in the Recommendation and the Jobe Adams Decree does not
21 affect Raft River. Raft River and its tributaries have no interest
22 whatever in the waters of Almo Creek and the distribution of the
23 same.

24 In the present case, only the Objectors' water rights on
25 Raft River are at issue. Jones is the last water user on Almo
26 Creek before the confluence with Raft River. This water right is

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3 a part of Water District 43-D. Therefore, as recommended, Water
4 Right No. 43-10356 can have no adverse affect on any senior water
5 rights on Raft River. Furthermore, if there is an issue with
6 Jones' lawful use of the water right, that issue should be
7 addressed by the water district responsible for Almo Creek and its
8 claims. It is unjust and improper to suggest that the Jones' water
9 right be singled out and plucked from its separately designated
10 water district and to arbitrarily place it into the Objectors'
11 district. There is no legal or factual basis which would permit
12 such an action. Therefore, the *Objectors' Joint Motion for Interim*
13 *Administration*, as a matter of law, should be in all respects
14 overruled and denied. The claimant should furthermore be awarded
15 its costs and attorney fees incurred as a result of being required
16 to defend this frivolous *Joint Motion for Interim Administration*
17 *Order*.

18 DATED this 27th day of February, 2003.

19 LING & ROBINSON

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21 By: 

22 Jason D. Walker
23 Attorney for Claimant
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CERTIFICATE OF MAILING

I hereby certify that on the 27th day of February, 2003,
I served the of the foregoing *Memorandum in Opposition to
Objectors' Joint Motion for Interim Administration Order* upon:

Roscoe Ward by ☒ U.S. Mail ☐ Fax ☐ Hand Delivery ☐ Overnight
P. O. Box 108
Almo, Idaho 83312

Nolan K. Branch by ☒ U.S. Mail ☐ Fax ☐ Hand Delivery ☐ Overnight
1823 South 2330 East
Malta, Idaho 83342

Clark W. Ward by ☒ U.S. Mail ☐ Fax ☐ Hand Delivery ☐ Overnight
HC 61, Box 1560
Malta, Idaho 83342

Rodney Hall by ☒ U.S. Mail ☐ Fax ☐ Hand Delivery ☐ Overnight
P. O. Box 631
Malta, Idaho 83342

Warr Brothers by ☒ U.S. Mail ☐ Fax ☐ Hand Delivery ☐ Overnight
c/o Olene Warr
2231 South, 2350 East
Malta, Idaho 83342

IDWR Document Depository
Attention: Candice McHugh
P. O. Box 83720 by ☒ U.S. Mail + ☒ Fax ☐ Hand Delivery ☐ Overnight
Boise, Idaho 83720-0098

Chief, Natural Resource Division
Office of the Attorney General
State of Idaho by ☒ U.S. Mail ☐ Fax ☐ Hand Delivery ☐ Overnight
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prepaid, in envelopes addressed to said check-marked parties/
entities at the foregoing addresses.


Jason D. Walker