

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A43-00379
Date Received: 5/11/1989
Receipt No: S007095
Received By: SCC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: GLEN W. JONES 208-824-5513
Address: P.O. BOX 151
ALMO, ID 83312
OR
Name: BRENT JONES 208-824-5513
Address: P.O. BOX 151
ALMO, ID 83312

2. Date of Priority: APR 01, 1880

3. Source: EDWARDS CREEK Trib. to: RAFT RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
15S	24E	14	NE	NE	SW		CASSIA
			SE	NE	SE		CASSIA

5. Description of diverting works:
HEADGATES AND DITCHES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	1.200		

7. Total Quantity Appropriated is:
1.200 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 240.0 Acre Feet Per Annum.

9. Non-irrigation uses:

A43-00379

Page 1

Date: 05/11/89

MICROFILMED
MAR 03 1993

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
15S	24E	13	NW	SW		IRR	20.0
						Section Acres	20.0
		14	NE	SE		IRR	20.0
			SE	SE		IRR	40.0
						Section Acres	60.0
						Total Acres	80.0

11. Place of use in counties: CASSIA

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
A43-00380

14. Remarks:
THIS SOURCE IS AKA NORTH ALMO CREEK AND IS DESCRIBED IN THE DECREE AS SUCH. USGS MAPS SHOW IT AS A TRIBUTARY OR PART OF EDWARDS CREEK.

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 10/18/1928

ALBION-IDAHO LAND CO.
Decree Plaintiff

vs

JOBE ADAMS ET AL
Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Glen W. Jones Date: 5-11-89

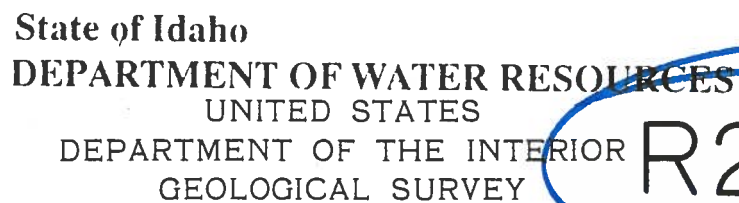
Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 11th day
of May 19 89 Steve C. Oll
Notary Public

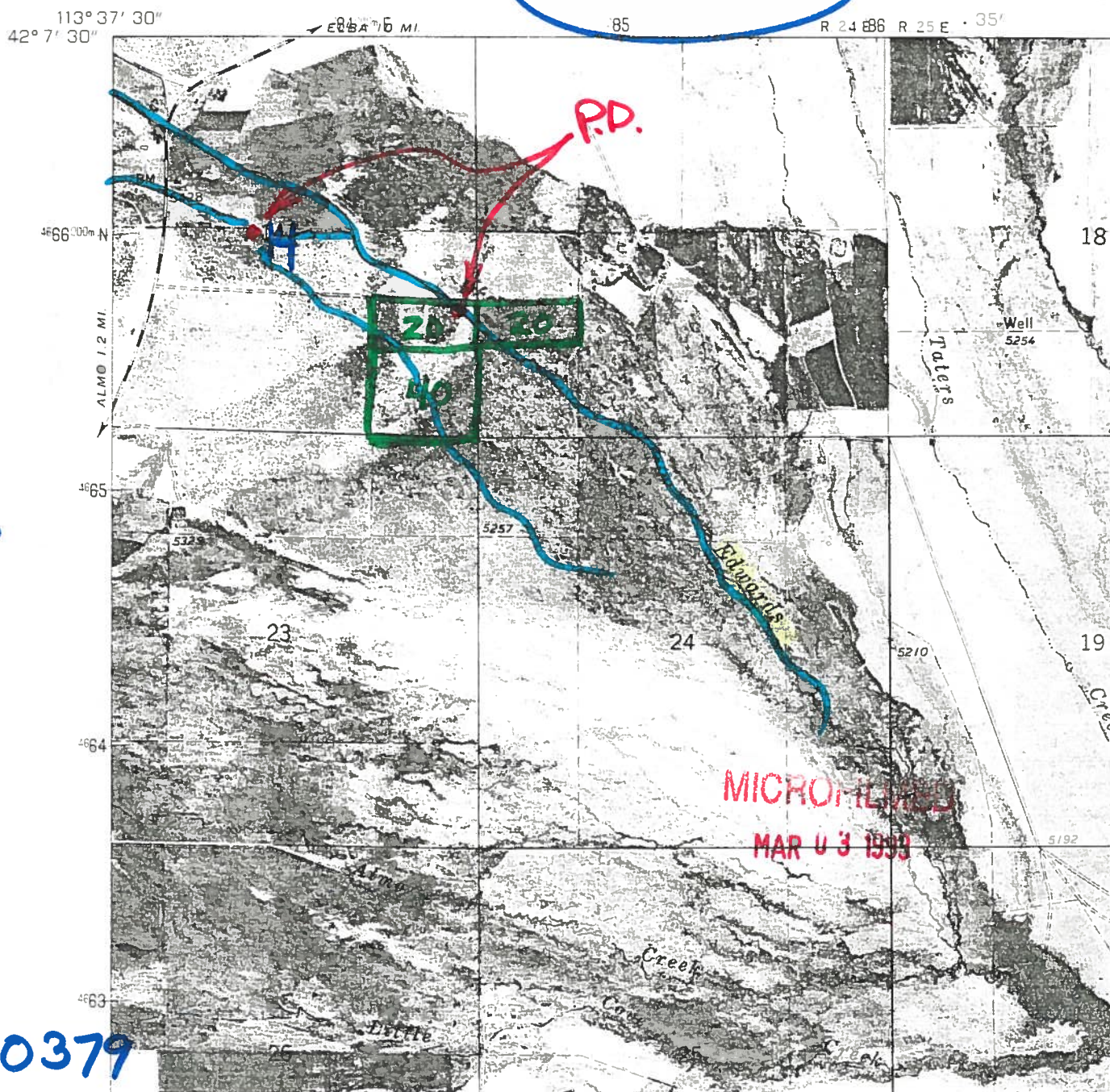
Seal

Residing at Twin Falls
My Commission Expires Dec 7, 1994



R24E

R25



6/9/94

COMMUNICATION DOCUMENTATION

Claim No. STEED HEARING

A43-00379

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Frank Hitchcock

September 8, 1997 1:34pm

NAME:
OLEN WARD-UPPER RAFT RIVER

RE:
RECORDS FOR USAGES RELATED
STEED/REEDSPRINGS-HEARING.

WALK-IN AT 9:20-CW-WANTED ALL USAGES "LICENSES" FOR BRUCE DURFEE, KENT DURFEE, BRENT JONES AND BILL JONES.

DISCUSSED HIS PROTEST RE: STEED USAGES AND FLOWS FROM THE STEED ACRES.

REVIEWED BASIN 43 SEL/ALPHA CLAIMS RECORDS FOR UPPER RAFT RIVER CLAIMS ASSIGNED TO FH AND DID AN AJS58 QUERY FOR THE CLAIMS OF THE NOTED PEOPLE. COLLATED BY NUMBER AND PUT COPIES OF THE NAME LISTS USED WITH EACH SET.

WARD CALLED BACK AT 11:42 TO CONFIRM THE JONES CLAIMS BEING PULLED. HE STOPPED IN SHORTLY AFTER NOON TO PICK UP THE PROOFS LEFT FOR HIM AT THE FRONT DESK.

**NOTICE OF ERROR
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: June15, 2001

Water right number: 43-379

BRENT JONES

PO BOX 151

ALMO ID 83312

Telephone Number: (208)824-5533

GLEN W JONES

PO BOX 151

ALMO ID 83312

Telephone Number: (208)824-5533

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

X I AGREE with this proposed recommendation: no changes need to be made.

DATE: 6-11-2001

SIGNATURE: Brent Jones

Please print your name: Brent Jones

IDWR Regional Office, 1341 Fillmore St, Suite 200, Twin Falls, ID 83301, (208)736-3033

COMMUNICATION DOCUMENTATION

From: Vikie Hancock

6/11/2001

Regarding:

Old Decreed Right 43-386

Customer:

Tammy Jones/Brent Jones

[illegible]

Tammy Jones called to discuss making an appointment for her and Brent to meet with me. I asked what the issue was, and she said that Brent thought that he wanted to file on the above decreed right. I told her that he could, but that I would disallow it. I told her that from what I had determined, this right belonged to Almo Water Company and that I was recommending it to them.

I told her that I had discussed this right with Brent several times and that I was aware of his issues with lack of delivery. She said she was not fully informed of what Brent and I had talked about. I told her that from everything I had reviewed at Brent's request, I believed that this right was correctly claimed by Almo Water Company. I told her that I had discussed it with our attorney, and that she had written Brent a letter telling him that the issue was between him and Almo Water Company and that he should have a copy of the letter there. I told her that the claim would cost \$50.00, but that if she and Brent thought that it would give them more standing at a later date to claim the right for themselves in court, by all means they should spend the money and have me disallow it. I explained that they could object to my disallowing it to the SRBA court and present evidence to Judge Burdick as to why they thought that they should be granted the rights to the old decree. I said that it was a process designed so that people could represent themselves, but that in their case an attorney may be advised.

She said that she would talk to Brent and get back to me if they wanted to make an appointment. I told her that possibly I could have our attorney on speaker phone to talk to them about it also, if they wanted that.

09/12/2000

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 43-379

NAME AND ADDRESS: BRENT JONES
GLEN W JONES
PO BOX 151
ALMO, ID 83312

SOURCE: ALMO CREEK, N. FK. TRIBUTARY: ALMO CREEK

QUANTITY: 1.2 CFS

USE OF THIS RIGHT WITH RIGHT NO. 43-00380A IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 1.58 CFS

PRIORITY DATE: 04/01/1880

POINT OF DIVERSION: T15S R24E S14 NENESW Within CASSIA County
T15S R24E S14 SENESE Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04-01 10-31	1.20 CFS

PLACE OF USE:

<u>IRRIGATION Within CASSIA County</u>					
T15S R24E S13	NWSW	15	T15S R24E S14	NWSE	6.3
T15S R24E S14	NESE	15	T15S R24E S14	SWSE	2.4
T15S R24E S14	SESE	40			
78.7 ACRES TOTAL					

USE OF THIS RIGHT WITH RIGHT NO. 43-00380 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 79 ACRES IN A SINGLE
IRRIGATION SEASON

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE
EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER
THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6),
IDAHO CODE.

THIS RIGHT IS SUBJECT TO REGULATION BY THE WATERMASTER OF
WATER DISTRICT 43D

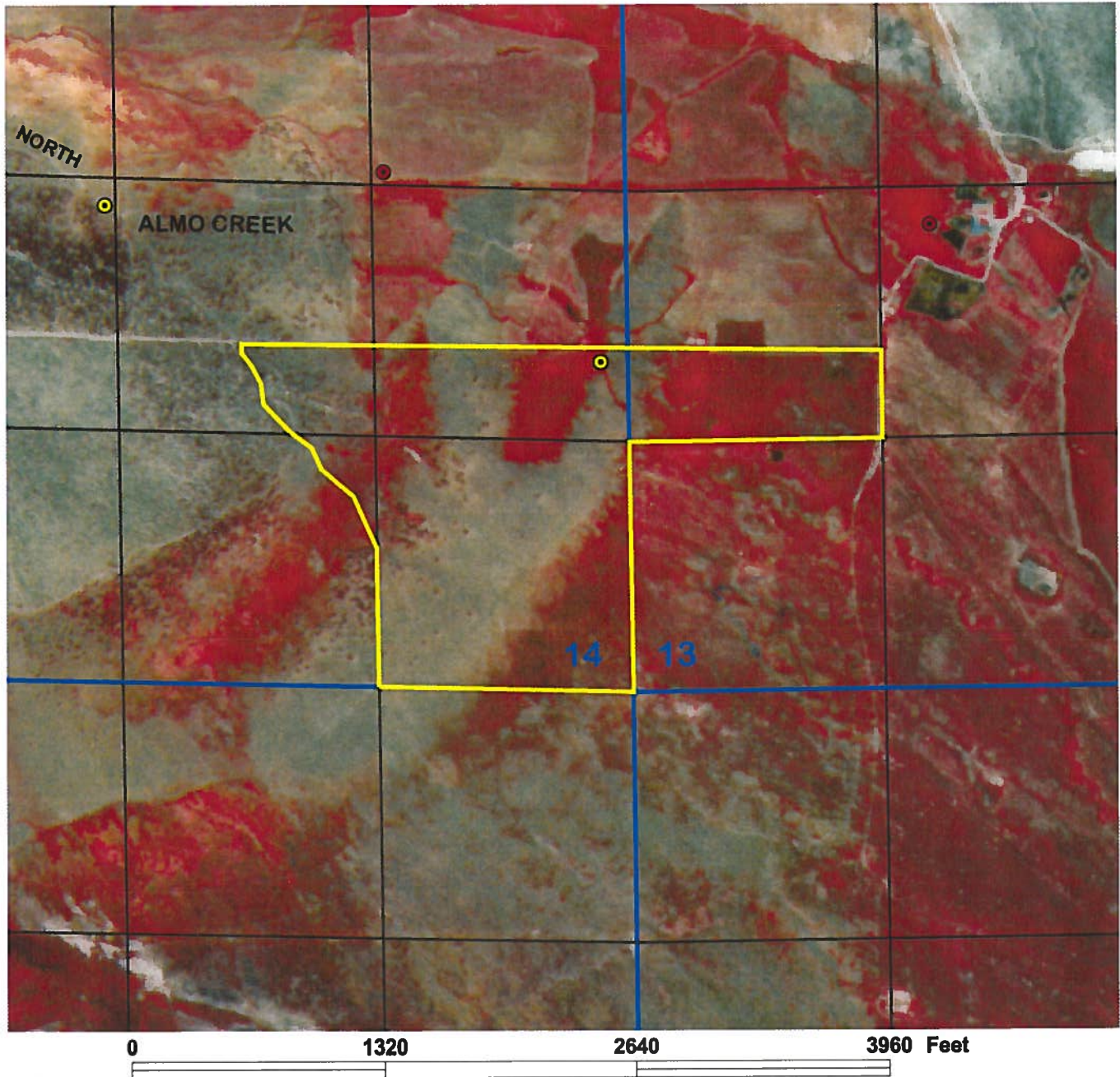
EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

USE OF THIS RIGHT IS COMBINED WITH WATER FROM ALMO WATER
COMPANY.

Idaho Department of Water Resources

RIGHTS: 43-00379
AND 43-00380A

RECOMMENDED PLACE OF USE
TWP 15S, RNG 24E, SEC 13, 14
Data entry on March 15, 2000



-  **RECOMMENDED POINT OF DIVERSION**
-  **RECOMMENDED PLACE OF USE**
-  **SECTION LINES**
-  **QUARTER/QUARTER LINES**



GIS PLACE OF USE PRESENTATION
1987/1988 NAPP AERIAL PHOTOGRAPHY

DATA ENTRY BY VIKIE HANCOCK

CLAIM NUMBER

A43-00379
A43-00380

DATE
3-15-2000

TRANSFER NUMBER

AGENT
UH

CLAIMED ACRE TOTAL
80

GIS ACRE TOTAL
78.7

	TWP	RNG	SEC	NE				NW				SW				SE				
				NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
CLAIM	15S	24E	13										20							20
GIS													15							15
RECOM													15							15
CLAIM	15S	24E	14		2											20		2	40	60
GIS					63											15		24	40	63.7
RECOM					6.3											15		24	40	63.7
CLAIM																				
GIS																				
RECOM																				

B43-POU.SHP
SHAPE NOS.

B43-POD.SHP

NOS.
DESCRIPTION

DBF TABLES UPDATED

B43-DBPOU.DBF

B43-DBPOD.DBF

JPEG LAYOUT
✓ 43-00379

Water Right Number - R43-00379

Prefix Translation: RESEARCH

Old (D) Number -

*** C - CURRENT OWNER ***
JONES
Last Name - + First Name - + Address - +
GLEN W

JONES

BRENT

1 - PO BOX 151
2 -
3 -
City- ALMO
Phone - 208-824-5533
1 - PO BOX 151
2 -
3 -
City- ALMO
Phone - 208-824-5533
State- ID Zip- 83312

+ - Priority Date - + 04/01/1880 + - Region - + 17 SOUTHERN + - Stage - + D - DECREED + - Status - +

+ - Source - + NORTH ALMO CREEK + - Tributary - + RAFT RIVER +

Twn	Rng	Sec	Tract	Lot	Rflg	County	Point of Diversion
15S	24E	14	NE NE SW SE NE SE	(31)	CASSIA	(31)	CASSIA

Code	Description	Period From	Period To	Water Use	Diversion Rate	Diversion Volume
01 - IRRIGATION		04/01	10/31		1.200	

+ - Total Div. Rate - + 1.200 + - Total Div. Volume - + + - Total Consumptive Use - + 0.0 + - KW Usage - +

Twn	Rng	Sec	Tract	Lot	Acres	Place of Use	Code	Description	County
15S	24E	13	NW SW		15.0		01	IRRIGATION	(31) CASSIA
15S	24E	14	NW NE		6.3		01	IRRIGATION	(31) CASSIA
15S	24E	14	NE SE		15.0		01	IRRIGATION	(31) CASSIA
15S	24E	14	SW SE		2.4		01	IRRIGATION	(31) CASSIA
15S	24E	14	SE SE		40.0		01	IRRIGATION	(31) CASSIA

Total Acres: 78.7

+ - Diversion Means - HEADGATES AND DITCHES
+ - Non-Irrigation Use -
+ - Other Rights for Same Use - A43-00380

Penk
FE-11
10/380
limited to ac
78.7 ac
2-18
5-22

Prefix Translation: RESEARCH

	No Old Water Right Numbers Found	Old Water Right Numbers
+-----+-----+		

	Decree Plaintiff	Decree Defendant	Decree Date
ALBION-IDAHO LAND CO.			10/18/1928
		JOBE ADAMS ET AL	

Date: 03/15/2000 User Id: VIVANCOCK Subject: SOURCE
CHANGED SOURCE TO NORTH ALMO CREEK TO AGREE WITH HISTORICAL
SOURCE THAN EDWARDS CREEK AND BOTH ARE COMPLETELY ALLOCATED.
DECREASE AND CURRENT WATER USE. NORTH ALMO CR ENTIRELY DIFFERENT

03/15/00 VHANCOCK

Adjudication Rights Dates and Flags Area					
Court Report Filing	- 00/00/0000	Field Inspection Made	- 00/00/0000	Civil Case Number	-
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 05/11/1989	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S007095	Water District	- 430
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- OK	Presumption Flag	-
				Notice of Error Flag	-

Hancock, Vikie

From: Hancock, Vikie
Sent: Wednesday, August 02, 2000 11:50 AM
To: McHugh, Candice
Subject: RE: Letter to Brent Jones

Candice,

I think you covered it, as I told him that the crux of the matter was whether it was in our process do anything for him or not. I'll print out a copy of it for the file. Thanks.

Vikie

-----Original Message-----

From: McHugh, Candice
Sent: Wednesday, August 02, 2000 11:42 AM
To: Hancock, Vikie
Subject: Letter to Brent Jones

Vikie --

Here's the letter I plan to send to Mr. Jones. It is short, sweet and to the point. Is there any other information you think I need to explain to him?

<< File: August 2 Let to Brent Jones.doc >>

Candice

August 2, 2000

Brent Jones
PO Box 151
Almo, Idaho 83312

Re: Almo Water Company Claim A43-00386

Dear Mr. Jones:

I am a Deputy Attorney General for the State of Idaho and I represent the Idaho Department of Water Resources. Several weeks ago, I spoke with Vikie Hancock from the Department's Southern Region Office; she expressed to me your concern about the delivery of the above mentioned water right. I also understand that you mentioned that you wanted to withdraw your land from the Almo Water Company.

I believe your concerns are between you and Almo Water Company and that the Department of Water Resources cannot help you with your questions. I suggest that you consult an attorney who can advise you regarding your rights within the company and as a water user. If you have any questions please call me at (208) 327-5404.

Very Truly Yours,

Candice M. McHugh
Deputy Attorney General

Field Exam Notes

Field Exam Date: 03-14-2000

Claim No: VARIOUS – BRENT JONES

Agent: Vikie Hancock

I met with the claimant this date to discuss his various claims in the Almo area. It was prior to the irrigation season and so the actual field exam was limited. Mr. Jones has Almo Water Company water shares that he uses in conjunction with the water represented by Claims 43-00379, -00380 and -10164. His father, Glen Jones, is deceased and should be removed from the claims when proper documentation is received. Mr. Jones address is correct. Also see field notes on GIS layout.

Claim **A43-10164** is on two springs that are located in the SE NE Section 22. They are known as Middle and North Springs. There is a third spring, Bath Spring, that is not included as a source for this claim. Bath spring is used by Neil Durfee as stockwater and claimed as A43-10030. Bath Spring actually used to be a partially covered cement pool and admission was charged for use of the hot pool. The spring water is warm to the touch but not hot. The waters of both Middle and North springs merge a short distance from the springs and the claimant conveys the water via a ditch to a pond in the SWNE NW of Section 23. From the pond he runs a ditch to the northwest and flood irrigates around 15 acres as calculated by GIS. In 1963 and 1964 the springs were measured in response to the diminishing effects of a well drilled by King and Tracy in the SESE section 22. They measured 0.21 cfs at that time. In 1947 the springs were measured at 0.32 cfs and in 1962 the local groundwater board issued an order granting Glen Jones and Edwin Durfee a right to 0.32 cfs from Middle and North Springs with a priority date of 1878. In addition to this irrigation claim, Gary Jones has claimed winter season stockwater, Brent Jones included .07 cfs year-round stockwater in this claim and Harold Durfee has claimed rear-round stockwater of 0.07 cfs from three springs, which I presume includes Bath Spring. Harold Jones has not claimed an irrigation claim to the Middle and North springs, however Brent Durfee says that he should. My recommendation is that Brent Jones be awarded a POU of 15 acres and the proper portion of 0.32 cfs that will be determined when it is known if Mr. Durfee wishes to file an irrigation claim to the springs.

A43-00379 is based upon a decreed right to the POU claimed in the 1928 Jobe Adams Decree. The source for this claim should be changed to North Almo Creek as it was originally decreed. IDWR followed the USGS map for stream identification at claims taking but the map is in error. During my field exam with Brent, and also Gary Jones this date, they showed me the different channels that are Edwards Creek and North Almo Creeks. Claimant's points of diversion are definitely on the stream known as North Almo or the North Fork, which is a manmade channel diverted from Almo Creek in Section 4, T15S, R24E. Where the North Almo channel crosses under the Elba/Almo Highway

there is a weir that is used by the District 43B watermaster to measure North Almo Creek. Water users of N. Almo below this weir are: Brent Jones, Gary Jones and the May Family Trust (formerly Edna Cahoon). Waters from North Almo Creek sink upon the property of Gary Jones. Any waters that may run off enter Almo Creek. At a point in the NWNESE the two channels are very close and water from N. Almo can be injected into Edwards and vice-versa. This is done to more efficiently convey water when the flows are either very high or very low as Gary Jones has rights to both sources. I found acres irrigated that Mr. Jones had not claimed in the NESWSE and NWNWSE section 14 and which should be included in the recommendation. The full diversion rate decreed should be recommended. Mr. Jones also claimed A43-00380 for use on the same land. See below.

A43-00380 is a highwater decreed right to N. Almo Creek and should also have the claimed source changed. Half of the place of use for this decreed right was in the NWNE and NENW of section 14, which is land owned by Gary Jones. This decreed right was split by transfer #3218 wherein the point of diversion of 0.75 cfs of the 1.5 decreed was moved to section 10. This leaves a total of 0.75 cfs appurtenant to property owned by Brent Jones and diverted in section 14. Mr. Jones has an accomplished transfer of POU. Gary Jones has not as yet filed a claim to his 0.75cfs under this right.

A43-02477 is based upon a license and an accomplished transfer of place of use. There is now a pivot on the tracts. Expansion claim **A43-10167** was for an additional 58 acres irrigated with the same diversion rate because of increased efficiency of water use. I found only 38 additional acres by GIS and the irrigated acres I identified were verified by Claimant. Also, the priority date of 1970 is not substantiated in the file. 1976 ASCS photos do verify usage to as early as that date. Claimant will attempt to find proof of use in 1970.

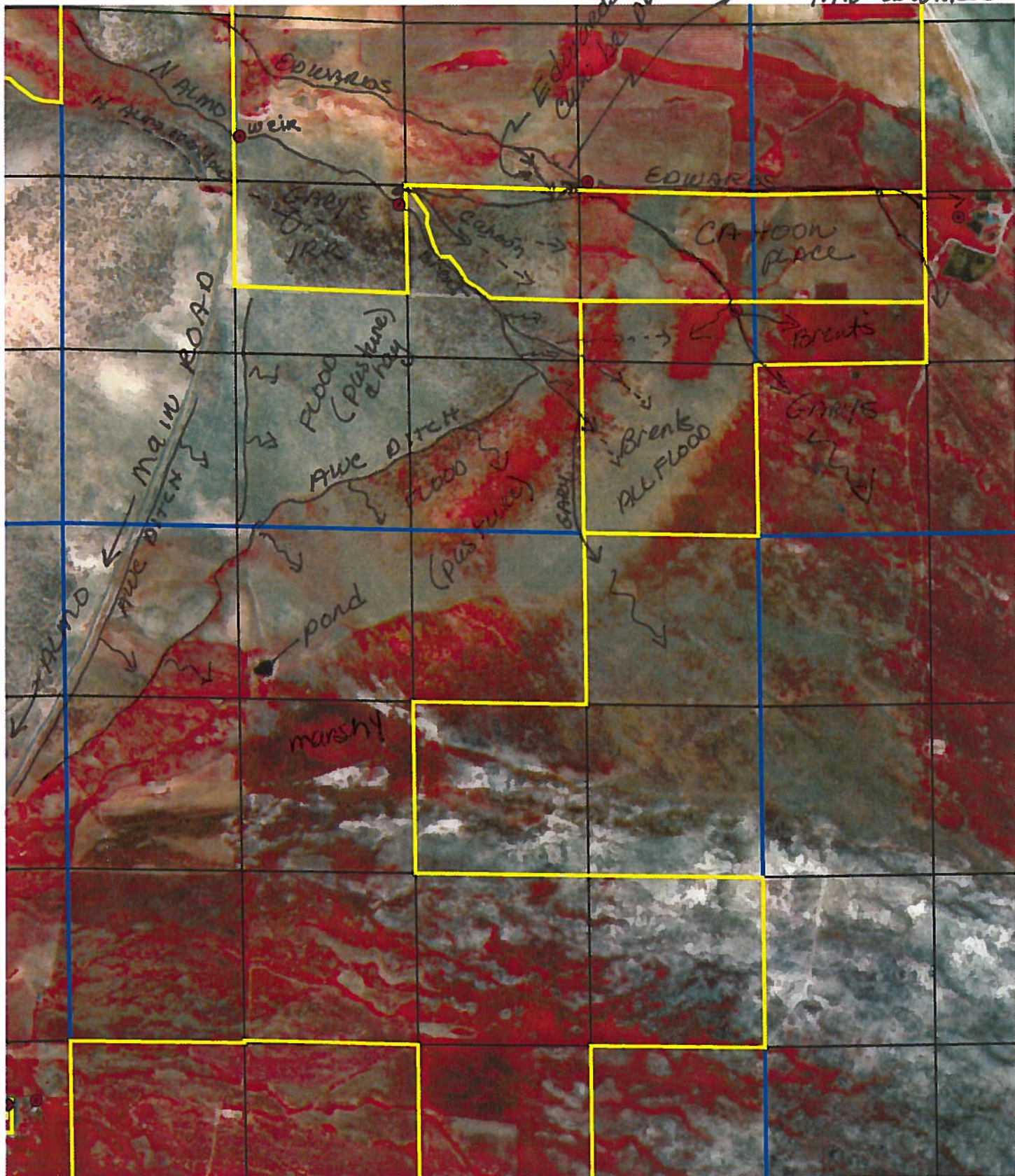
Claim **A43-02463** agrees with the original license in place of use. The expansion of 40 acres as claimed in **A43-10168** was found to be closer to 30. The number of expanded acres was found to be represented in the 1976 ASCS photo by claimant. It appears that in 1987 the bulk of the 30 acres was more marginally irrigated than in years past. Claimant says the east half of the 40 is quite rocky. Proof of priority of the expansion has not been substantiated back to 1971, but is verified to 1976 per ASCS maps. Mr. Jones also informed me that since 1987 he has installed a pivot.

A43-11222 is a claim for an instream diversion of stockwater from Raft River that Mr. Jones filed yesterday.

FIELD NOTES

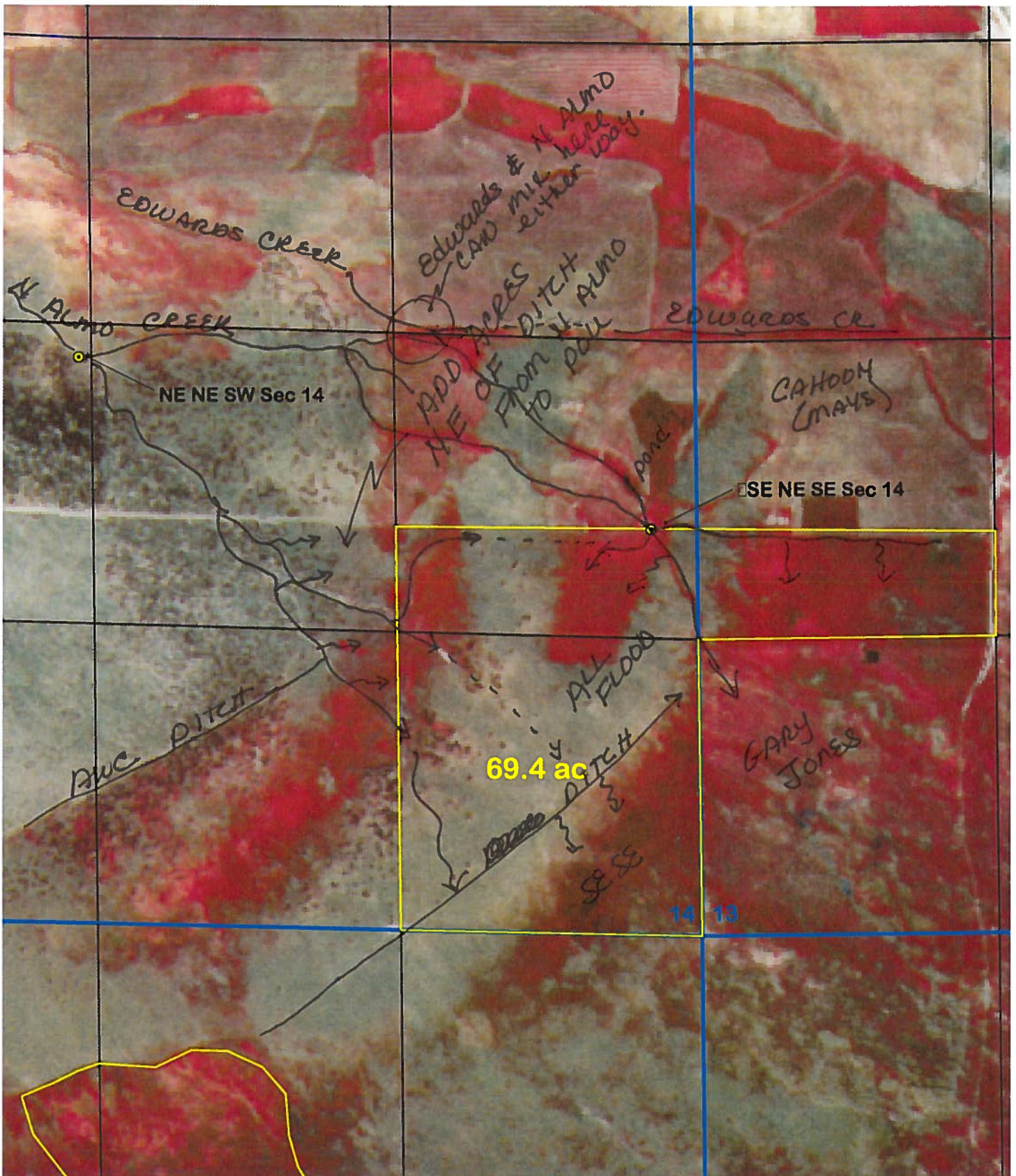
Claim No(s): Brent Jones

TWP 15S, RNG 24E
N ALMO CAN BE PUT
INTO EDWARDS HERE



FIELD NOTES

CLAIM NO(S): A43-00380 & A43-00379



* 43-00379 Brent Jones 3-14-2000

- 1- Source needs to be chgd to North Almo Creek
- 2- Add to POU & Recalc acres irrigated
- 3- Decree is for 1.2 cfs on $\approx$ 83 ac
1880 priority N. Almo Cr
Div Rate OK
- 4) - POB correct as claimed.

* 43-00380 - Needs to be split A & B
between Brent & Gary Jones per
Transfer #3218 9-17-1985

0.75 cfs chgd pt of diversion to gravity
pipeline in Section 10 used on NE 1/4
and NW 1/4 Sec 14 only.

- 1) .75 cfs to Brent Jones accomplished
Transfer to claimed POU. (add to acres)
Same POU as 379.
Limit combined acreage
Limit combined cfs to 1" per acre.

addition to the above right, for the irrigation of the land above described.

-00379

Jesse Jones
1880-Apr. 1

1.2 s.f.

To be diverted from North Almo Creek for the irrigation of $SE\frac{1}{4}SE\frac{1}{4}$, Sec. 14, Twp. 15 S. R. 24 E.B.M., South $1/3$ $NW\frac{1}{4}SE\frac{1}{4}$, Sec. 14, Twp. 15 S. R. 24 E.B.M. South $1/3$ $NW\frac{1}{4}SW\frac{1}{4}$, Sec. 13 Twp. 15 S. R. 24 E.B.M., South $1/3$ $NE\frac{1}{4}SE\frac{1}{4}$, Sec. 14, Twp. 15 S. R. 24 E.B.M.

380

1910-June 20

1.5 s.f.

To be diverted from North Almo Creek for the irrigation of $SE\frac{1}{4}SW\frac{1}{4}$ and $SW\frac{1}{4}SE\frac{1}{4}$, Sec. 14, Twp. 15 S. R. 24 E.B.M., $NE\frac{1}{4}NW\frac{1}{4}$ and $NW\frac{1}{4}NE\frac{1}{4}$, Sec. 14, Twp. 15 S. R. 24 E.B.M.

381

William Jones
Mary Ann Jones
1880-Apr. 1

7 s.f.

To be diverted from North Almo Creek for the irrigation of $NE\frac{1}{4}SW\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$, Sec. 13 $NW\frac{1}{4}NE\frac{1}{4}$, Sec. 24, Twp. 15 S. R. 24 E.B.M. $SE\frac{1}{4}SW\frac{1}{4}$, Sec. 13, $E\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, Sec. 24 Twp. 15 S. R. 24 E.B.M. $SW\frac{1}{4}SW\frac{1}{4}$, Sec. 13 $NE\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}SE\frac{1}{4}$, Sec. 23, $W\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$, Sec. 24, Twp. 15 S. R. 24 E.B.M.

382

1880-Apr. 1

7 s.f.

To be diverted from Edwards Creek for the irrigation of the above described land.

383

William Shangles
1879-Apr. 30

1 s.f.

384

1884-Apr. 30

.8 s.f.

385

1885-Apr. 30

1 s.f.

To be diverted from South Almo Creek, for the irrigation of $E\frac{1}{2}SE\frac{1}{4}$, Sec. 30, $N\frac{1}{2}NW\frac{1}{4}$ $SW\frac{1}{4}NW\frac{1}{4}$, Sec. 32, Twp. 15 S. R. 24 E.B.M.

Almo Water Company,
a corporation.

386

M. B. Durfee right
1878-Apr. 30

4 s.f.

To be diverted from Main Almo Creek for the irrigation of $E\frac{1}{2}SE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}$, Sec. 2 $SW\frac{1}{4}NW\frac{1}{4}$ and $NW\frac{1}{4}SW\frac{1}{4}$, Sec. 23, Twp. 15 S. R. 24 E.B.M.

387

H. R. Cahoon right
1879-Apr. 30

2 s.f.

$E\frac{1}{2}NW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$, Sec. 22, Twp. 15 S. R. 24 E.B.M.

388

H. D. Durfee, Jr. right
1879-Apr. 30

2 s.f.

$SW\frac{1}{4}$, Sec. 15, Twp. 15 S. R. 24 E.B.M.

389

H. D. Durfee, Sr. right
1879-Apr. 30

2 s.f.

$NE\frac{1}{4}$, Sec. 16, Twp. 15 S. R. 24 E.B.M.

390

Wm. E. Johnston right
1879-Apr. 15

1.9 s.f.

$SW\frac{1}{4}SW\frac{1}{4}$, Sec. 9 and $SE\frac{1}{4}NE\frac{1}{4}$ and $E\frac{1}{2}SE\frac{1}{4}$, Sec. 8, Twp. 15 S. R. 24 E.B.M.

391

Thomas O. King right
1880-Apr. 20

2 s.f.

$SW\frac{1}{4}SE\frac{1}{4}$, Sec. 23, $NE\frac{1}{4}NW\frac{1}{4}$, Sec. 20, Twp. 15 S. R. 24 E.B.M.

392
393

Jacob Paden right
1880-Apr. 30
1883-Apr. 30

James T. Taylor
1880-Apr. 30

$SW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$,
15 S. R. 24 E.B.M.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR
CASSIA COUNTY.

CIVIL NO. 8968

DECISION

ALMO WATER COMPANY, an Idaho
corporation, et al.,

Plaintiffs,

VS.

IVAN DARRINGTON, Water Master of
Water District 8-E, et al.,
Defendants.

This matter came on for trial before the court without a jury on March 3rd, 1970. The trial concluded the following day. Plaintiffs were represented by A. H. Nielson, John Coleman, and Robert C. Paine. Defendants were represented by Lawrence H. Duffin, except that defendant R. Keith Higginson, who did not appear at trial, was represented by William D. Collins, assistant attorney general, who did not appear at trial. If counsel desire, the following may be treated as findings of fact and conclusions of law.

In Cassia County, Idaho, Almo Creek runs south-southeast, Edwards Creek runs south-southeast, Stines Creek runs east-southeast, and Sythe (Scythe) Creek runs east-southeast, all in Township 15 South, Range 24 East, Boise Meridian, and elsewhere. Edwards Creek lies east of Almo Creek. Stines and Sythe Creeks lie west of Almo Creek. In 1879, at a point near the center of the north boundary of Section 9, Almo Creek was caused to divide by a man-made channel which runs between Almo Creek and Edwards Creek. This man-made channel is variously referred to as "North Almo," "North Fork of Almo," and the "Taylor ditch;" and what was the main Almo channel below this diversion is commonly referred to as "South Almo" and "South Fork of Almo."

Water rights on Almo Creek were first adjudicated in this court prior to February 29, 1892. [See Kirk et al. v. Bartholomew et al., 3 Idaho 367, 29 Pac. 40.]

Another adjudication was commenced May 20, 1922; it was entitled Albion-Idaho Land Company vs. Jobe Adams et al. in U.S. District Court at Boise, Idaho. A decree, commonly referred to as the "Jobe Adams

Decree," was signed on October 18, 1928, and filed October 23, 1928, as Decree No. 992. This decree was affirmed by the Circuit Court of Appeals of the Ninth Circuit on October 21, 1930 [39 F. 2d 37]. Motion to amend the decree was filed October 5, 1943, but it failed [58 F.Supp. 579]; however, this motion had nothing to do with any rights involved in the case at hand, and is included for historical reference purposes only.

The Jobe Adams decree adjudicated the following water right, among others: "Helen Edwards 1879 Mar. 17 1.6 s.f. To be diverted from North Almo Creek" for the irrigation of SW 1/4-NW 1/4 of Section 13, and SE 1/4-NW 1/4, S 1/2-NE 1/4 of Section 14, all in Township 15 South, Range 24 E., B.M. Also decreed was a supplemental (not additional) right to 1.6 s.f. from Edwards Creek for the same lands.

In 1935 the defendant, Louis Eames, became and now is the successor in interest of Helen Edwards.

The Jobe Adams decree adjudicated the following water right, among others: "William Jones Mary Ann Jones 1880 Apr. 1 7 s.f. To be diverted from Edwards Creek" for the irrigation of E1/2-SW 1/4, SW 1/4-SW 1/4 of Section 13; W 1/2-SE 1/4, W 1/2-NE 1/4, W 1/2 of Section 24; NE 1/4-NE 1/4, S 1/2-NE 1/4, SE 1/4-SE 1/4 of Section 23; all in Township 15 South, Range 24 E., B.M.

The defendants, Richard, Norma and Owen Jones are the successors in interest of William and Mary Ann Jones. They have additional water, 1880 priority, from North Almo Creek.

The defendants, Glen and Doris Jones, Arley and Edna Cahoon, have water rights in North Almo Creek which have a priority inferior to that of defendant Louis Eames. The plaintiff, Almo Water Company, an Idaho corporation, has numerous water rights, 1879 and subsequent, in Almo Creek and its tributaries, including the North Fork of Almo Creek.

The creeks heretofore mentioned now are, and for many years have been in Water District 8-E. Annually a watermaster is elected for District 8-E to perform those duties prescribed by statute, including the deliveries of water to users in accordance with their priorities and adjudicated rights.

North Almo (or North Fork or Taylor Ditch) is an artificial creek, constructed by man. At the division of the main Almo Creek a device has been constructed which will permit the watermaster to permit the main Almo to flow in its natural channel (South Almo), or the watermaster may divert the flow down the North Fork. This diversion may be accomplished at will, subject to availability of water. The North Fork will not transport water to the lands of Louis Eames without a diversion point on the North Fork. Defendant Eames has a ditch from the bank of the North Fork to his lands but it would require some reconstruction or "cleaning" for lack of use. Additionally a cut would be required in the bank and a device constructed to divert the water. If Defendant Eames took his water this way he would be unable to irrigate all the lands he presently irrigates.

Plaintiff, Almo Water Company, has constructed some ditches or "canals" for the purpose of utilizing the waters of the main Almo. One such canal takes off from the main Almo in Section 4 and runs southerly between sections 9 and 10, 16 and 15, and then cuts southeasterly across section 22. Somewhere in the southwest corner of section 10 this canal branches off easterly to Edwards Creek, above the Eames measuring device in Edwards Creek.

Water is turned in and out of the North Fork to satisfy certain of the rights of the defendants Jones, and when the water drops to the point where there is not sufficient to fill these rights, then the North Fork is closed, dry, to fill prior rights on the Almo Creek. When the North Fork is opened to the waters of Almo Creek, the following rights flow:

Ida Cahoon	60 inches	1880
Helen Edwards	80 inches	1879
Jesse Jones	60 inches	1880
William Jones	<u>350 inches</u>	1880.
	550 inches	

During this time there also is sufficient water in Edwards Creek to satisfy the Helen Edwards right of 80 inches, 1879 priority, and Louis Eames draws his water from Edwards Creek.

Since 1935 when Louis Eames succeeded to the Helen Edwards right,

defendant Eames has received his 80 inches of 1879 water from the Jones' 7 s.f. (350 inches) of 1880 Edwards Creek water, and Jones' have received Eames' 80 inches of 1879 Almo Creek water as demonstrated in the preceding paragraph. [There was an exception in 1969 when the 80 inches of Eames' 1879 water was diverted to the canal above mentioned and transported to Edwards Creek and there delivered to the Eames property. The watermaster operated in this manner on orders from the State Reclamation Engineer, a defendant in this action.] Richard Jones and Louis Eames, since 1935, have understood and agreed upon the exchange above referred to. During all that time Eames has actually taken his water from Edwards Creek, by exchange with Jones, except for 1969 when the water was brought to Edwards Creek by the Almo Water Company canal.

Edwards Creek is not connected to Almo Creek except by the company canal above referred to which flows from Almo Creek into Edwards Creek.

Defendant Louis Eames owns 1-1/2 shares in Almo Water Company and by virtue thereof is entitled to and uses some company water.

Water District 8-E has been in existence since prior to 1940 and has had a watermaster every year. The watermaster controls the diversions and deliveries of waters from Almo Creek (including North and South Forks) and Edwards Creek. When Almo Creek falls below 200 inches the watermaster ceases to function and the users rotate the use of the stream. When Edwards Creek falls below 80 inches the watermaster diverts available water from Almo Creek into Edwards Creek to bring it up to 80 inches.

The waters of Almo Creek, Edwards Creek, Stine and Sythe Creeks are necessary for the irrigation of hay grasses and pasture, and for the watering of livestock.

RE: Stine & Sythe Creeks

For more than 60 years William W. Bruesch and Virginia Bruesch, husband and wife, and their predecessors in interest, have used all of the waters of Sythe Creek for the irrigation of the following described lands in Cassia County, Idaho: S 1/2-NE 1/4, NW 1/4-NE 1/4, NW 1/4-NW 1/4 of Section 20; E 1/2-NW 1/4, W 1/2-NE 1/4, SE 1/4, NE 1/4, and N 1/2-SE 1/4 of Section 20; N 1/2-SW 1/4, NW 1/4-SE 1/4 of Section 21; all in Township