

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: A43-10356

Date Received: 6/06/1989

Receipt No: 5087564

Received By: BAS

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: WILLIAM D. JONES 208-824-5527
Address: P.O. BOX 152
ALMO, ID 83312

OR

Name: WILLIAM D. JONES AND SON 208-824-5527
Address: C/O WILLIAM D. JONES
P.O. BOX 152
ALMO, ID 83312

2. Date of Priority: APR 30, 1879

3. Source: SOUTH ALMO CREEK Trib. to: RAFT RIVER
LATERALS NONE

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
15S	25E	30	SE	SE	SE		CASSIA
		32	SE	NW	NE		CASSIA

5. Description of diverting works:
WOODEN HEADBOARDS AND GRAVITY TO FLOOD IRRI.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	2.000		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

A43-10356

Page 1

Date: 06/06/89

COPY

MICROFILMED
MAR 04 1993

10. Place of Use:

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
15S	25E	32	SE	SW		IRR	10.0
			SW	SE		IRR	33.0
			SE	SE		IRR	30.0

Section Acres 73.0

Total Acres	73.0
-------------	------

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:

A43-00184, A43-00185, A43-02538, A43-04043, A43-02479

14. Remarks:

15. Basis of Claim: BENEFICIAL USE

COPY

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MAR 04 1993

(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.

MAR 04 1993

To whom it may concern:

I, Jim Sheridan can state without a doubt that the ~~acorage~~ in question was under irrigation from Almo Creek in the early 1940's.

I am qualified to make this statement because I helped Oscar and Leona Jones, William Jones parents, stock the hay on this ground.

This ground bordered Raft River on the north side and east of the Knight's property.

Jim Sheridan
Almo, Idaho 83312
Phone - 208-824-5568

RECEIVED

MAR 23 2007

Department of Water Resources
Southern Region

I, Leona Jones, married
Oscar Jones in 1930. I started
helping him do Ranch work
in that year. We irrigated from
Almo Creek and Raft River,
and put up hay on the ground
we irrigated

Leona Jones
P.O. Box 154
Almo, Idaho
83312

Phone no. - 824-5599

RECEIVED

MAR 23 2000

Department of Water Resources
Southern Region

IN THE MATTER OF:

State of Priority of
Adj. Claims 443-10356

AFFIDAVIT

State of Idaho

County of

Twin Falls

I, Leona Jones

being first duly sworn,

deposes and says:

that I have lived in the area
as a child and I know that this property
was irrigated by Oscar Jones and his
father William Jones as early as 1916.
They irrigated and put up khy on this
land whenever the water was available
from the channel by spring run off and
summer storms.

Leona Jones
(signature)

Subscribed and sworn to before me this 8th day of January 1992

Robert V. Korstell
(notary public)

Residing at

My commission expires

MICROFILMED

MAR 04 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

December 5, 1991

R. KEITH HIGGINSON
Director

A43-10356
WILLIAM D. JONES AND SON
C/O WILLIAM D. JONES

ALMO

ID 83312

RE: Evidence of Priority

RESPONSE DEADLINE
FEBRUARY 3, 1992

Dear Claimant:

The Notice(s) of Claim identified with the number shown above your name on the mailing label has been filed in the Snake River Basin Adjudication (SRBA). The Notice(s) indicate your water usage is based on "Beneficial Use" or a "Statutory Claim". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed. **The date of first use, known as the priority date, has not been confirmed by a License, Decree or Permit.** The Department will soon conduct reviews &/or field exams for the claims in your area. Since the priority date of a beneficial use water right can not be confirmed by field examination, **proof must be provided supporting the priority date you have claimed.**

The Department will not recommend the Notice(s) be decreed by the court as claimed if no evidence of a priority date is submitted.

Please find enclosed a computer printout of your Notice(s) and the pamphlet entitled "Evidence of Priority". The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement. I direct your attention to the two sections entitled "What Kind of Evidence is Required" and "Some Examples of Documents Which May Be Evidence of the Priority Date".

Please submit the required evidence supporting the priority date(s) by **February 3, 1992**, referencing all documents with the corresponding Notice number(s). If you have any questions not covered by this letter or the enclosed pamphlet, please contact this office.

Respectfully submitted,

Allen Merritt, P.E.
Water Rights Supervisor

Enclosures

MICROFILMED

MAR 4 1993

Q

IDWR Employee/Agent Frank Hitchcock

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.

Franklin D. Grvin to Anna J. Grvin

This Indenture, Made the 10th day of July in the year of
our Lord one thousand and eight hundred and eighty eight Between
Franklin D. Grvin of Shoshone Alturas Idaho Territory party of
the first part and Anna J. Grvin of the same place the party of
the second part Witnesseth: That the said party of the first
part, for and in consideration of the sum of work done upon
Ditcher in construction to the amount of \$75.00 Dollars lawful
money of the United States of America by done, by the said
party of the second part, the receipt whereof is hereby acknowl-
edged, does by these presents, remise release, and forever quit
claim, unto the said party of the second part one hundred and
sixty inches of the waters of the water appropriated and recorded
to me from Almo Creek and Raft River on the S. 1/2 of E. 1/4 of E. 1/4
of Sec. 32. And the S. 1/4 of N. 1/4 Sec. 33. T. 15. S. of R. 25.
East Together with all and singular the appurtenances hereunto
- aunts and appurtenances thereunto belonging, or in any wise
appertaining, and the reversion and reversions, remainder and
remainders, rents, issues and profits thereof, ---
To Have and to Hold, all and singular the said premises, to-
gether with the appurtenances, unto said party of the second
part, and to her heirs and assigns forever.
In Witness whereof, the said party of the first part
has hereunto set his hand and seal the day and year first
above written

ed sealed and delivered
The presence of
mess D. M. Stiles
County of Idaho } ss.
County of Cassia }

Franklin D. Grvin Seal

On the 11th day of May one thousand and eight hundred and
eighty nine personally appeared before me A. L. Richardson Clerk of the District
in and for the County of Cassia Franklin D. Grvin whose name is subscribed
annexed Instrument as a party thereto personally known to me to be the same
described in, and who executed the said annexed Instrument as a
thereto and duly acknowledged to me that he executed the same freely and
voluntarily and for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed the seal of said
at the day and year in this certificate first above written A. L. Richardson
for Record at Request of D. M. Stiles May 11. Seal By D. M. Stiles
1889

RECORDED
MAR 11 1889



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

December 5, 1991

R. KEITH HIGGINSON
Director

A43-10356
WILLIAM D. JONES
P.O. BOX 152

ALMO

ID 83312

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RESPONSE DEADLINE
FEBRUARY 3, 1992

Dear Claimant:

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Respectfully submitted,

Allen Merritt, P.E.
Water Rights Supervisor

Enclosures

MICROFILMED

MAR 4 1993

05/20/2004

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)
)
) Water Right 43-10356

NAME AND ADDRESS: WILLIAM D JONES & SONS
 C/O WILLIAM D JONES
 PO BOX 152
 ALMO ID 83312

SOURCE: ALMO CREEK TRIBUTARY: RAFT RIVER

QUANTITY: 0.560 CFS

PRIORITY DATE: 04/01/1935

POINT OF DIVERSION:
 T15S R25E S30 SESESE Within CASSIA County
 T15S R25E S32 NESENW Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	
IRRIGATION	04/01 10/31	0.560 CFS

PLACE OF USE:

<u>IRRIGATION Within CASSIA County</u>				
T15S R25E S32	SENE	23.0	T15S R25E S33	SWNW 5.0

28 ACRES TOTAL

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

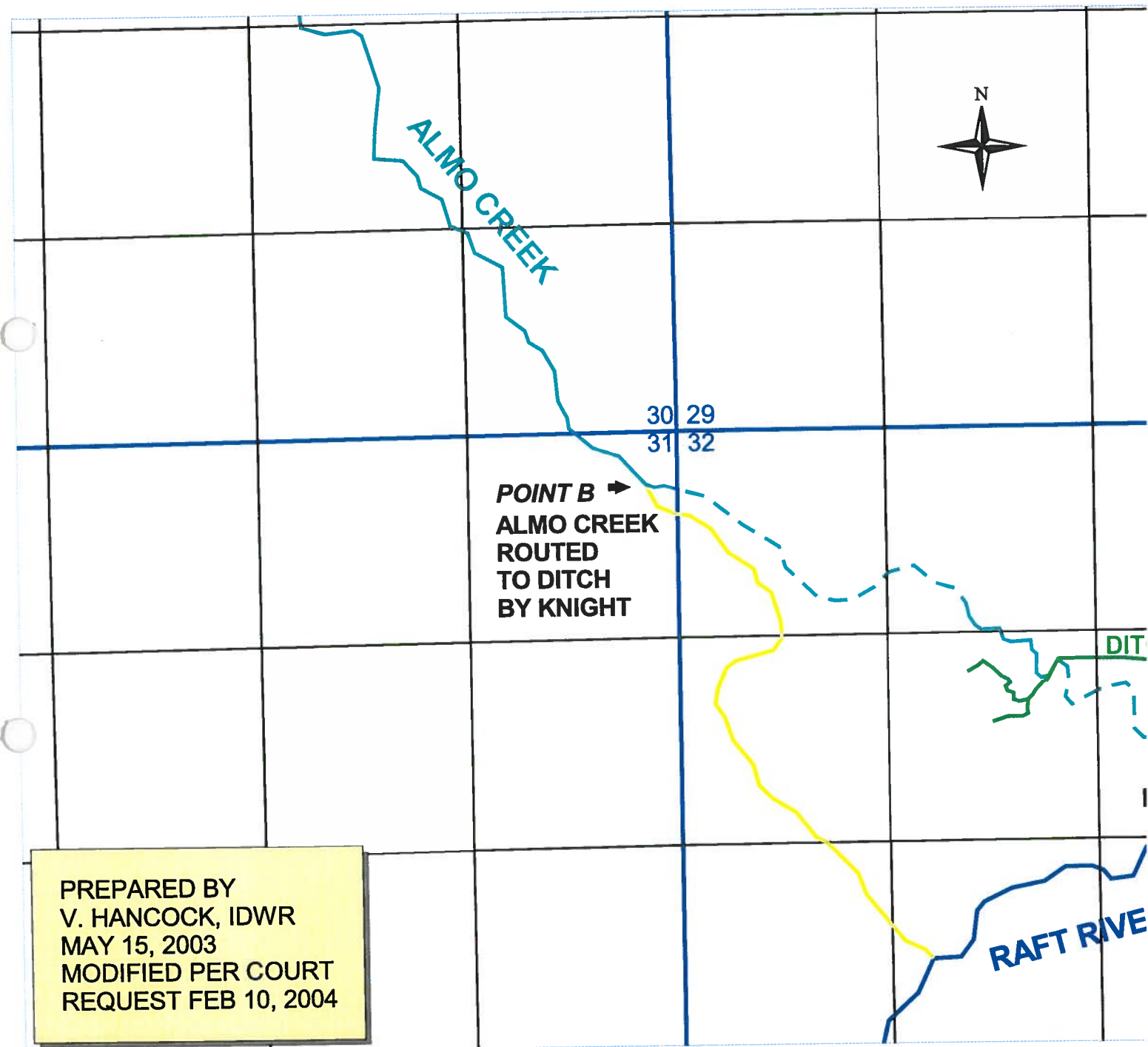
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE
EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO
LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION
42-1412(6), IDAHO CODE.

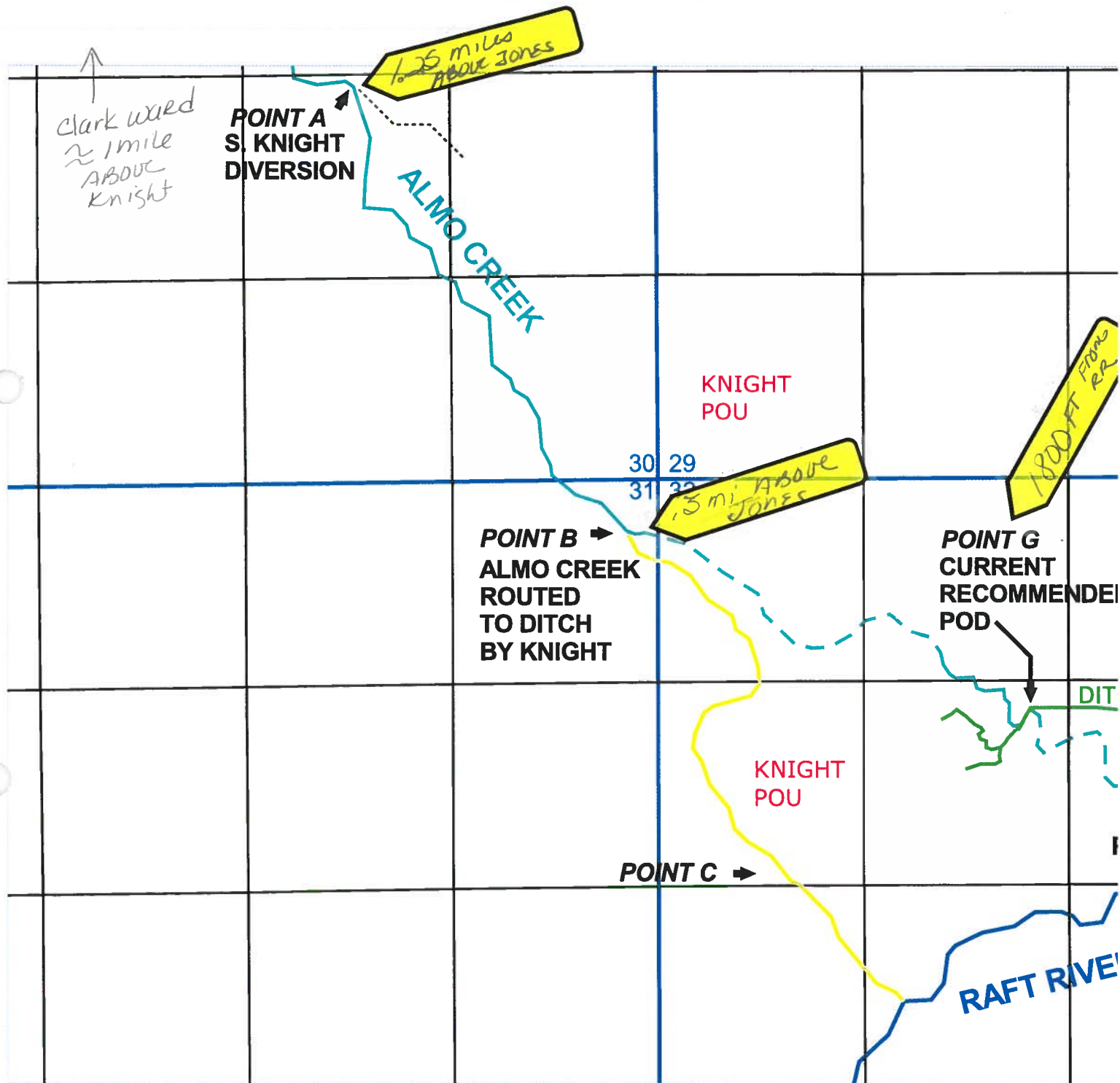
EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

SOURCE IS ALSO KNOWN AS SOUTH ALMO CREEK.

43-10356

ALSO SEE LEGAL FILE
AT STATE OFFICE





RECEIVED

MAR 03 2004

Department of Water Resources
Southern Region

2004 MAR -2 PM 4:10

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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) Subcase 43-10356
Case No. 39576) (William D. Jones and Son)
_____)
SPECIAL MASTER REPORT

FINDINGS OF FACT¹

Claim

William D. Jones and William D. Jones and Son, P.O. Box 152, Almo, Idaho 83312, filed a *Notice of Claim to a Water Right* (43-10356) on June 6, 1989, claiming 2 cfs from South Almo Creek and laterals to irrigate 73 acres in Cassia County from March 15 to November 15 with a priority date of April 30, 1879, based on beneficial use.

Director's Report

The Director of the Idaho Department of Water Resources filed his *Director's Reports for Irrigation and Other, Reporting Area 7, IDWR Basin 43* on September 28, 2001. The Director recommended the claim to William D. Jones and Son ("Jones and Son") for .56 cfs from Almo Creek ("also known as South Almo Creek"), tributary to Raft River, to irrigate 28 acres from April 1 to October 31 with a priority date of April 1, 1935, based on beneficial use. Claim 43-10356 is the last water right on Almo Creek before it joins the Raft River.² It is also the most junior water right on Almo Creek.

Objections

Roscoe and Joyce Ward filed an *Objection* on January 31, 2002, alleging the water right should not exist. Nolan K. Branch, Clark W. Ward, Olene Warr (Warr Brothers) and Reid S.

¹ Many of the findings of fact are from the April 3, 2003 *Special Master Report and Recommendation Re: Interim Administration* and are repeated here for the convenience of the reader.

² "Almo Creek can be characterized as discontinuous, but connected, stream segments. Almo Creek flows on the surface in gaining reaches, and sinks below the surface in losing reaches, depending on irrigation practices and seasonal ground water table fluctuations. . . . Almo Creek naturally flows in a southeasterly direction but some man-made ditches have altered this natural course." *Supplemental Director's Report Regarding Subcase No. 43-10356*, May 20, 2003, at 3 and Figure 1 attached thereto.

Stewart filed the same *Objection* on February 4, 2002, and Rodney Hall filed his *Objection* on February 7, 2002. On July 15, 2002, the Special Master entered an *Order Dismissing Objection* dismissing Reid S. Stewart's *Objection* based on his motion. Jones and Son did not object to the Director's recommendation.

Joint Motion for Interim Administration

On December 5, 2002, objectors Roscoe Ward, Nolan K. Branch, Rodney Hall and Olene Warr filed a *Joint Motion for Interim Administrative Order* seeking interim administration of 43-10356 "as part of Water District 43B [Raft River Water District] and requiring the claimants [Jones and Son] to follow the laws of the State of Idaho and limiting the usage of this claim to that which has been recommended by the Department of Water Resources." On February 19, 2003, objectors Roscoe and Joyce Ward filed a *Certificate of Service* completing service of notice on all claimants of water from the Raft River and Almo Creek who might be adversely affected by the requested order of interim administration pursuant to I.C. § 42-1417, (2),(b).

IDWR Recommendation

On March 14, 2003, IDWR filed its *Recommendation for Interim Administration for Subcase No. 43-10356*. First, IDWR included 43-10356 within its general provision for "separate streams" and recommended 43-10356 as a separate water right from Raft River. That general provision reads:

The following water rights from the following sources of water in Basin 43 shall be administered separately from all other water rights in Basin 43 in accordance with the prior appropriation doctrine as established by Idaho law.³

Next, IDWR recommended that claim 43-10356 be administered pursuant to the current *Director's Report*. That meant that Jones and Son could divert .56 cfs at 2 points of diversion to irrigate their 28 acres. IDWR noted that Jones and Son recently changed their delivery system to include a concrete structure or dam across the natural channel of Almo Creek and that their pumping from the pool above that concrete structure or dam "may cause injury to senior Raft

³ At a later hearing, senior water resources agent Vikie Hancock said that IDWR based its recommendation for "separate stream" designation of 43-10356 solely on the 1928 "*Jobe Adams* decree." *Albion-Idaho Land Company v. Jobe Adams, et al.*, Decree No. 992 (D. Idaho 1928). Jones and Son based their claim on beneficial use (not any decree) with a priority date of 1879, but IDWR recommended a 1935 priority date. Jones and Son did not object to the recommended priority date.

River water rights and may improperly impound unnamed springs that are tributary to Raft River.”⁴

Therefore, the Department recommends that the claimant [Jones and Son] allow water to pass through the existing concrete structure The claimant may pump water further north of the concrete structure either directly from the ditch . . . 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.

Finally, as to the objectors’ request that claim 43-10356 be administered as part of the Raft River Water District 43B, IDWR noted the claim is currently considered to be within the Almo Creek Water District 43D: “The Department sees no reason that this should be changed at this time.”

Pre-Hearing Agreement

Just before the hearing on the objectors’ *Joint Motion for Interim Administrative Order*, Jones and Son filed their *Response to Reply to Memorandum in Opposition to Objectors’ Joint Motion for Interim Administration Order*. They wrote: “Claimant Jones has no objection to an *Order for Interim Administration* being entered in accordance with the recommendation of IDWR for interim administration.”

Hearing

A hearing before the Special Master on the objectors’ *Joint Motion* was held at the SRBA Courthouse in Twin Falls, Idaho. Jason D. Walker appeared for claimants Jones and Son (William and Annalee Jones and their son, Rod Jones); objectors Roscoe and Joyce Ward, Nolan K. Branch, Rodney Hall and Olene Warr appeared *pro se*; and Candice M. McHugh appeared for IDWR, along with Vikie Hancock, IDWR senior water resource agent (Southern Region Office).

The objectors’ main concerns with IDWR’s *Recommendation for Interim Administration for Subcase No. 43-10356* had to do with the recommended source and its “separate streams” designation. The objectors wanted to prevent Jones and Son from diverting spring water rising immediately upstream from their recently constructed concrete structure or dam in Almo Creek near the junction of Almo Creek and the Raft River. The objectors did not agree that 43-10356 should be administered separately from the Raft River. They maintained that the spring water is

⁴ At trial, there was evidence that the concrete structure was actually built as part of a four or five year United States Department of Agriculture, Natural Resource Conservation Service, Almo Creek watershed project for flood control, to raise the valley water table and to control erosion. Trial Transcript (*TTr*), at 210-215. The NRCS designed and partially funded the structure and Jones and Son contracted out the work. *TTr*, at 290-291.

tributary to the Raft River from which they divert downstream below the junction. For that reason, they want 43-10356 administered as part of the Raft River Water District 43B instead of the Almo Creek Water District 43D.⁵ Water right 43-10356 is junior to the objectors' water rights from the Raft River.

Interim Administration

1. Special Master Report and Recommendation

On April 3, 2003, the Special Master entered a *Special Master Report and Recommendation Re: Interim Administration and Order Deadline to File Motions to Alter or Amend*. The Special Master recommended that, pending a trial on the merits, claim 43-10356 be administered as recommended by IDWR. The Special Master also set a deadline for all claimants of water from the Raft River and Almo Creek who might be adversely affected by the requested order of interim administration to file motions to alter or amend no later than April 17, 2003. No one filed such a motion.

2. Order of Interim Administration

On May 14, 2003, former-Presiding Judge Roger S. Burdick entered his *Order of Interim Administration; I.C. § 42-1417* "that [water right claim 43-10356] shall be administered in accordance with the *Special Master's Report and Recommendation Re: Interim Administration* until such time as the *Partial Decree* is entered therefore [sic], or upon further order of this Court."

Supplemental Director's Report

On May 20, 2003, IDWR filed a *Supplemental Director's Report Regarding Subcase No. 43-10356*. In his *Supplemental Director's Report*, the Director recommended deletion of a claimed point of diversion in § 30 and a change in the one remaining point of diversion (T 15S, R 25E, § 32, ~~NESENW~~ NESWNE) – "the point of diversion from the altered channel of Almo

⁵ At trial, one aspect of the objectors' position was stated as follows:

SPECIAL MASTER DOLAN: The Jobe Adams decree decreed all existing water rights on the date of the decree.

MR. MICIAK [counsel for objectors]: Uh-huh.

SPECIAL MASTER DOLAN: I think we can all agree to that.

MR. MICIAK: Yeah.

SPECIAL MASTER DOLAN: So you're saying that any water appropriated after that date or water that's no longer in the natural channel [of Almo Creek] is not subject to the Jobe Adams decree and the separate streams recommendation from IDWR?

MR. MICIAK: That's absolutely right.

TTr, at 302-303.

Creek.”⁶ In addition, the Director recommended: “The source of this water right is correctly described as Almo Creek.”

The *Supplemental Director's Report* noted:

Water right number 43-10356 was not decreed in the *Jobe Adams Decree* but is a beneficial use right with a 1935 priority date. This water right has never been administered because it is a beneficial use right. Consequently, this water right, although technically within the boundaries of the Almo Creek Water District, 43D has never been actively administered as part of any water district.

Supplemental Director's Report, at 8.

In his *Supplemental Director's Report*, the Director did not explicitly reiterate his earlier recommendation that water right 43-10356 be administered separately from Raft River water rights. Nevertheless, it was clearly understood that such was his intent. While noting that 43-10356 has never been actively administered as part of any water district (being a beneficial use claim), the Director wrote: “The Department included water right number 43-10356 on its general provision for separate streams and listed this water right as being separate.” *Supplemental Director's Report*, at 8. That designation did not change since the original 2001 *Director's Reports*.⁷

Trial

Trial was held over two days on May 29 and 30, 2003, at the Cassia County Courthouse in Burley, Idaho. Jason D. Walker appeared for claimants Jones and Son; Jason R. Miciak appeared for objectors Roscoe and Joyce Ward, Nolan K. Branch, Rodney Hall and Olene Warr; Clark W. Ward appeared *pro se*; and Candice M. McHugh appeared for IDWR, along with Vikie Hancock.

At trial, Clark W. Ward withdrew his objection when he confirmed that IDWR recommended deletion of the point of diversion in § 30 and a change of the one remaining point of diversion in § 32, from the west end of the Jones Ditch to the east end (variously called the “dirt dam” or “washout”).

⁶ At the hearing on the *Joint Motion for Interim Administrative Order*, William Jones agreed that the upper diversion point in § 30 is unusable without significant improvements.

⁷ At trial, Vikie Hancock was asked whether IDWR's recommendation concerning separate streams administration had changed since the original *Director's Reports*. Ms Hancock replied: “So I would, I would say that the department's position then would be as it is in the supplemental director's report, that this right was on Almo Creek and would be administered separately. There's nothing that's changed.” *TTr.*, at 82.

Post-Trial Matters

1. Briefing

At the conclusion of the trial, counsel for the parties agreed to submit closing arguments in writing. The objectors lodged their *Opening Post Trial Brief* on September 5, 2003. The claimants Jones and Son lodged their *Claimant's Post-Trial Memorandum and Findings of Fact and Conclusions of Law* on October 3, 2003. Finally, the objectors lodged their *Reply Brief* on October 24, 2003. The matter was deemed submitted for decision when the 370 page *Transcript* was lodged on December 17, 2003.

2. Site Inspection

Upon agreement of counsel, the general area of the diversion and use of water under claim 43-10356, near Almo, Idaho, was viewed by the Special Master on June 6, 2003, accompanied by counsel for the parties, Vikie Hancock and Doug Jones, IDWR water rights supervisor (Southern Region Office).

CONCLUSIONS OF LAW

***Prima Facie* Weight of IDWR Director's Recommendation**

Idaho Code § 42-1411, (4) states that, "Upon filing with the court, the director's report . . . shall constitute prima facie evidence of the nature and extent of the water rights acquired under state law." That means the elements of water rights recommended in director's reports are presumed to be true unless disproved by some evidence to the contrary:

The Legislature's direction that the contents of the Director's report shall constitute prima facie evidence of some water right claims was a permissible exercise of the authority, recognized in I.R.E. 301, to create an evidentiary presumption. Unless that evidentiary presumption is overcome by the evidence or the application of that presumption is clearly erroneous on its face, the facts set forth in the Director's report are established.

In Re SRBA Case No. 39576, 128 Idaho 246, 256, 912 P.2d 614, 624 (1995).

Issues in Dispute

The objectors' disputes with the Director's *Supplemental Director's Report* were the same ones they voiced earlier when the Director first recommended 43-10356: the recommended source (Almo Creek) and IDWR's inclusion of 43-10356 in its general provision for separate streams. The objectors argued that the source is actually spring water tributary to the Raft River, not Almo Creek; hence, the water right should be administered as part of the Raft River Water

District 43B, not the Almo Creek Water District 43D. The objectors did not dispute any other elements recommended in the Director's *Supplemental Director's Report*. Jones and Son disputed none of the Director's amended recommendations, including deletion of the point of diversion in § 30 and a change in the legal description of the one remaining point of diversion in § 32.

1. Source⁸

The witness testimony and follow-up site inspection confirmed IDWR's description of Almo Creek as "discontinuous, but connected, stream segments," at least below the Sylvia Knight diversion (attached exhibit, Point B). All the surface flow of Almo Creek is diverted by Sylvia Knight upstream from the Jones and Son's recommended point of diversion (attached exhibit, Point F). Below the Knight diversion, it would be fair to say Almo Creek is intermittent, except during high water events. In fact, it requires an experienced water agent to identify which of the multiple channels in the nearly level pastures is the natural course of Almo Creek.

IDWR described the general area as meadowland where man-made ditches have altered the natural course of Almo Creek. During the site inspection, such alterations were evident throughout the area. In addition, stock-grazing has severely impacted all of the riparian areas. The most significant alteration, however, was a man-made six foot wide "straight ditch" that runs west to east from where it intersects the meandering channel of Almo Creek (attached exhibit, marked "Ditch"). Some witnesses called this the "Jones Ditch."

At the intersection point, the Jones Ditch, capable of carrying water up to three feet deep, captures the "underflow" of Almo Creek and conveys it easterly toward the Jones and Son's 28 irrigated acres. *Supplemental Director's Report*, at 7. IDWR reported that the Jones Ditch existed as early as 1956, and that "the natural channel of Almo Creek has been permanently altered many years ago to force creek water into the east-flowing ditch, and that any surface flow coming down the natural channel of Almo Creek had flowed through this man-made straight channel. . . ." Based on that information, IDWR concluded:

[I]t is apparent that the straight man-made ditch has become the natural channel of Almo Creek and should be so recognized by the Department. Therefore, the Department has confirmed that the source for the Claimant's [Jones and Son's] water right number 43-10356 is Almo Creek.

Supplemental Director's Report, at 7-8.

⁸ The exhibit attached hereto, prepared by IDWR, is similar to Figure 1 attached to the *Supplemental Director's Report*, and may help the reader understanding the following discussion.

IDWR originally recommended the point of diversion for water right 43-10356 where the west end of the Jones Ditch intersects the natural channel of Almo Creek. However, it later concluded that it may not be reasonable to install a measuring devise at that point. But it would be fairly simple to install a measuring devise at the east end of the Jones Ditch where IDWR now recommends the Jones and Son's point of diversion for 43-10356. That makes sense because, for administrative purposes, IDWR now considers the Jones Ditch to be the "natural" channel of Almo Creek.

IDWR noted that Jones and Son recently changed his water delivery system by installing a concrete structure or dam across the natural channel of Almo Creek downstream from the recommended point of diversion (attached exhibit, Point D, Pump Site). IDWR found that pumping from this structure may cause injury to senior water rights on the Raft River because it may improperly impound "unnamed springs" that are tributary to the Raft River. To prevent this potential injury, IDWR required Jones and Son to allow water to pass through the structure: "The claimant may pump water further north of the concrete structure either directly from the [straight] ditch . . . 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." *Supplemental Director's Report*, at 6, n.2.

Based on the record and in light of the *prima facie* weight accorded the Director's recommendations, the evidence is clear that the source of water right 43-10356 is Almo Creek, not spring water tributary to the Raft River.⁹ The objectors' interests in spring water identified by IDWR as tributary to Almo Creek and the Raft River will be adequately protected by the strictures imposed on Jones and Son as to where they may pump water to irrigate their 28 acres.

2. Separate Streams

Even though the source of water for water right 43-10356 is Almo Creek, tributary to the Raft River, there remains the issue of separate streams designation by IDWR. It will be recalled that IDWR based its recommendation for separate streams designation on the October 18, 1928 *Jobe Adams* decree entered in the United States District Court for the District of Idaho, Southern Division. *Albion-Idaho Land Company v. Jobe Adams, et al.*, Decree No. 992 (D. Idaho 1928).

⁹ By statute, the IDWR Director's role in a general adjudication, such as the SRBA, is that of "an independent expert and technical assistant to assure that claims to water rights acquired under state law are accurately reported . . . I.C. § 42-1401B, (1). In this subcase, neither party presented expert testimony to contradict IDWR's recommendation that the source is Almo Creek.

The critical questions to be answered are whether the *Jobe Adams* decree was an *in personam* (versus *in rem*) action and whether the objectors are bound by the terms of that decree.

A. *In Personam* Action

In the federal diversity of citizenship *Jobe Adams* private adjudication,¹⁰ lasting over 6 years, Judge Charles C. Cavanah decreed various water rights to the Raft River (and its tributaries), “an inter-state stream arising in the Raft River Mountains, having its primary sources in certain springs near Lind, Utah, and near Moulton, Idaho . . . and thence flowing in a northerly direction through Cassia County and emptying into the Snake River near Bonanza Bar.” *Jobe Adams*, at 5 (¶ XIV). The court joined multiple parties¹¹ and decreed “for use in the irrigation of the lands [purpose of use], the following and various amounts of water [quantity] hereinafter specifically mentioned and set out with the priorities [priority date] as hereinafter specified, and set out, for the irrigation of the particular tracts of land [place of use] hereinafter specified and set out. . . .” *Jobe Adams*, at 6 (¶ XX).

In the *Jobe Adams* decree, Judge Cavanah held:

[T]hat 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 . . . by the terms of the decree of the state court,¹² 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 [emphasis added].

Jobe Adams, at 5 (¶ XV).

Later in the *Jobe Adams* decree, Judge Cavanah ordered:

Almo Creek

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 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

¹⁰ “That this is an action between citizens of different states and that the amount involved exceeds the sum of \$3000.00, exclusive of interest and costs.” *Jobe Adams Decree*, at 4 (¶ XIII).

¹¹ Judging from the large number of named parties to the *Jobe Adams* case, the court probably joined all known water users diverting from the Raft River and its tributaries.

¹² By this language, it is unclear whether Judge Cavanah was referring to an earlier unknown state district court decree or perhaps to some action or recommendation of C.W. McClain who was appointed as “commissioner” in the *Jobe Adams* private adjudication to take testimony, transcribe the testimony, mark exhibits and transmit the record (“composed of certain stipulations, the oral testimony so taken and the exhibits offered”) to the Court for consideration. *Jobe Adams*, at 3.

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.

Jobe Adams, at 31.

Finally, Judge Cavanah ordered:

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.

Jobe Adams, at 32.

By any fair reading, the lawsuit resulting in the *Jobe Adams* decree was an *in personam* action; i.e., the court acquired jurisdiction or power over the named parties, in contrast to jurisdiction over certain property (the water of the Raft River and its tributaries). That being the case, the named parties and their successors-in-interest are bound by the decree. There is nothing in the record to indicate the *Jobe Adams* decree was ever appealed.

B. Binding Effect of *Jobe Adams* Decree

In 1994, the Interim Legislative Committee on the Snake River Basin Adjudication voiced its concerns about various decrees around the state which, as a matter of law, virtually ignore the hydrologic connection between water sources:

If water resources in the Snake River Basin are to be managed for maximum beneficial use within the constraints of the Constitution, laws of the State and new directives of the legislature, the priority of those rights must be established. There are presently a number of decrees affecting surface and ground water tributary to the Snake River plain. These decrees were created and operate in a vacuum. They do not acknowledge the existence of other tributaries they may affect or rights listed in the decrees are or may be subordinate to other rights not listed.

These decrees are not effective vehicles for management of the entire system.

1994 Interim Legislative Committee statement, at 1 (§ II), quoting from a 1983 Snake River Technical Advisory Committee report, *Needed Water Resources Programs in the Snake River Basin*.

The *Jobe Adams* decree is an example of a court, for whatever reason, ignoring the hydrologic connection between water sources. Judge Cavanah may have done so recognizing the decree of another court, but the legal result is that, since at least 1928 (almost 76 years), Almo

Creek has been considered a separate stream from the Raft River for administrative purposes, despite their clear hydrologic connection.

The Idaho Supreme Court has held that a prior decree entered in a private adjudication is binding only upon the parties (and their privies) to that decree. *State v. Hagerman Water Right Owners*, 130 Idaho 736, 947 P.2d 409 (1997). The Court quoted I.C. § 42-1401A which defines a private adjudication as binding “only those persons joined in the action and for the administration of such rights.” I.C. § 42-1401A, (8). The Court then cited its much earlier decision that a decree in proceedings to adjudicate rights to the use of water are not strictly *in rem*; therefore, the decree is not conclusive as to parties who are strangers to it. *Mays v. District Court*, 34 Idaho 200, 200 P. 115 (1921).

Of course, in the *Hagerman* case, the Idaho Supreme Court was concerned with whether IDWR was bound by a prior decree entered in a private adjudication and held it was not bound because it was not a party. But a necessary implication from that case is that all parties (and their privies or successors-in-interest) included in the *Jobe Adams* decree are bound by the decree.¹³ That being the state of the law, IDWR has properly administered Almo Creek water separately from the Raft River since at least 1928, when the *Jobe Adams* decree was entered.

In the present subcase, the objectors’ predecessors-in-interest were named parties in the *Jobe Adams* decree and thus they are bound by that court’s determination that Almo Creek water must be administered separately from the Raft River; i.e., Jones and Son’s water source must be administered as part of the Almo Creek Water District 43D, not the Raft River Water District 43B.

Administration of Water Right 43-10356

Water Right 43-10356 should be administered by IDWR as part of Almo Creek Water District 43D as recommended by IDWR and as described in its separate streams general provision.

¹³ In the law, such an implication is termed a “negative pregnant.” Of course, this does not preclude parties to the SRBA with affected rights who were not parties to the *Jobe Adams* decree from attacking and potentially setting aside the separate streams provision in that decree, at least as to their rights. However, parties to the SRBA and their predecessors-in-interest who were parties to the *Jobe Adams* decree are estopped from collaterally attacking the decree.

Jones and Son's Water Right

Jones and Son are entitled to a partial decree adjudicating a water right under claim 43-10356 as described in the attached *Special Master Recommendation for Partial Decree for Water Right 43-10356*.

DATED March 2, 2004



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

2004 MAR -2 PM 4: 15
FBI IDAHO COUNTY-SUBA
TWIN FALLS CO., IDAHO
FILED

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

RECOMMENDATION

MAR 2 2004

Thomas A. DeLo

SPECIAL MASTER



ORIGINAL ALMO CREEK CHANNEL

NEW ALMO CREEK CHANNEL

DITCH

RAFT RIVER



POINT F
RECOMMENDED
POD

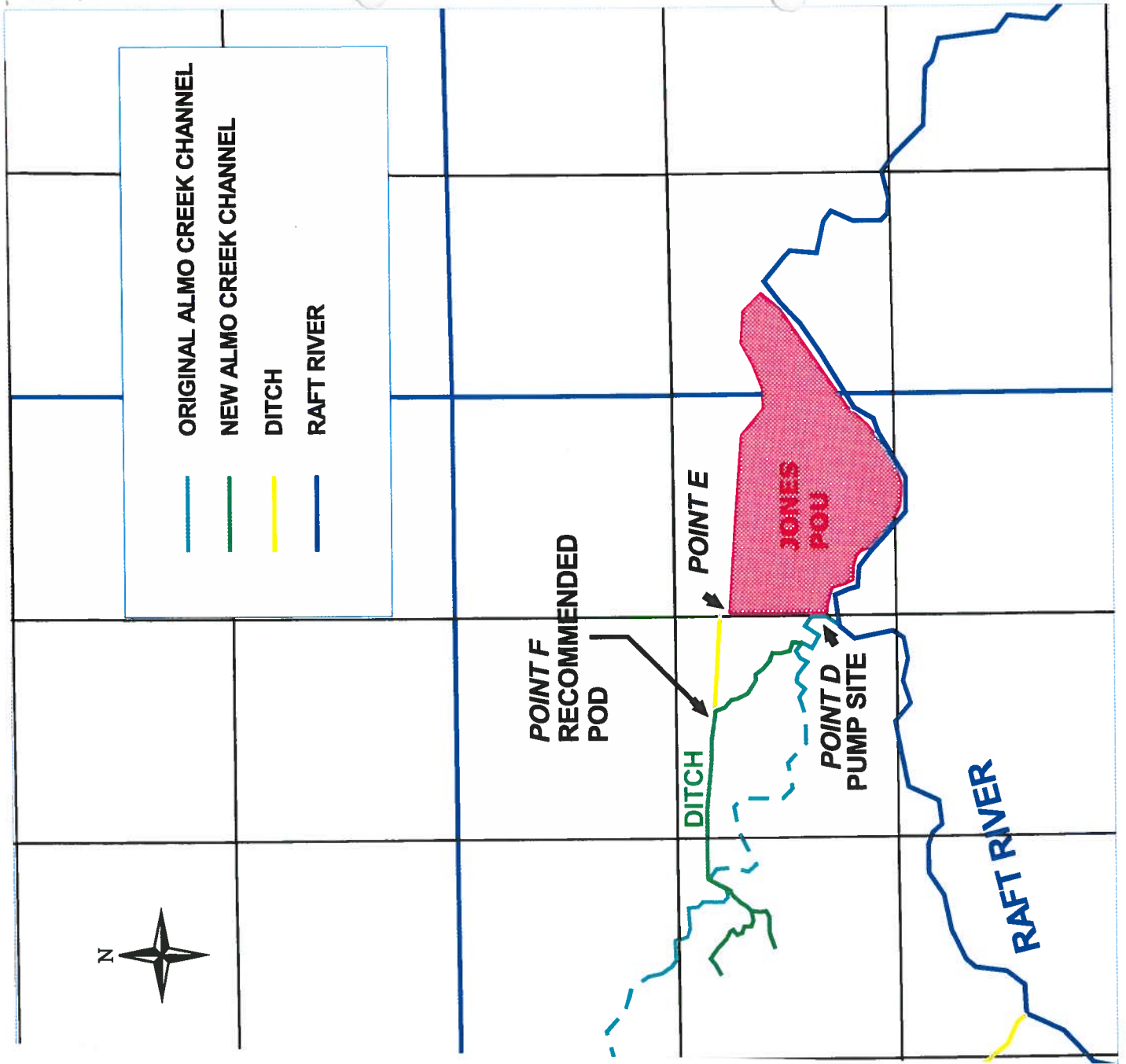
POINT E

JONES
POD

POINT D
PUMP SITE

DITCH

RAFT RIVER



2004 MAR -2 PM 4:14

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

)

CERTIFICATE OF MAILING

Case No. 39576

)

)

Water Right(s): 43-10356

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on March 02, 2004, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

NOLAN K BRANCH
RODNEY HALL
ROSCOE WARD
WARR BROTHERS

Represented by:

JASON MICIAK
139 RIVER VISTA PLACE STE 102
PO BOX 2632
TWIN FALLS, ID 83303-2632
Phone: 208-734-5444

CERTIFICATE OF MAILING

PAGE 1
03/02/04

2004 MAR -2 PM 4:14

DEPT. COURT-SRBA
TWIN FALLS CO., IDAHO

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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 43-10356

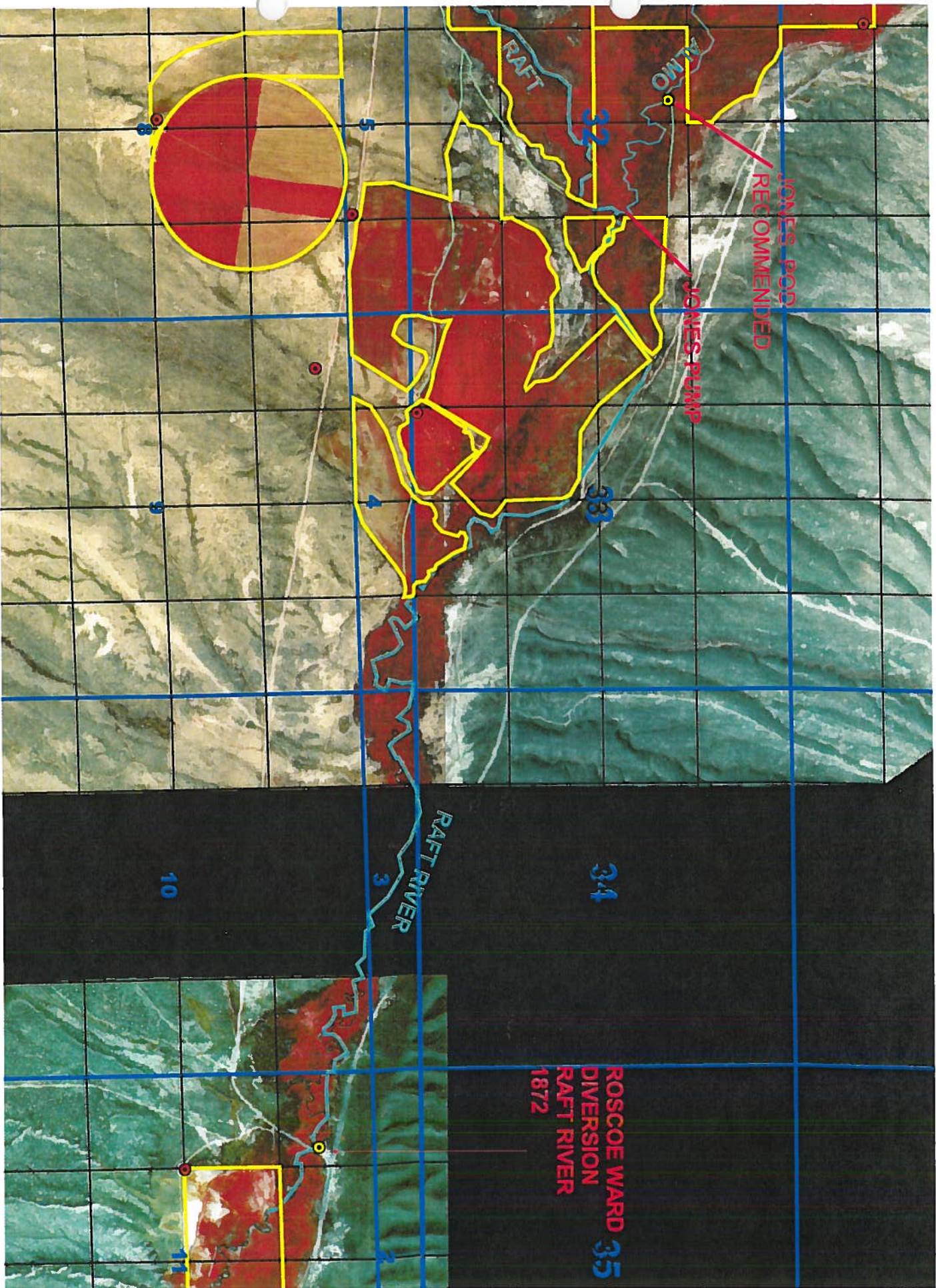
On March 02, 2004, Special Master TERRENCE A. DOLAN issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED March 02, 2004.

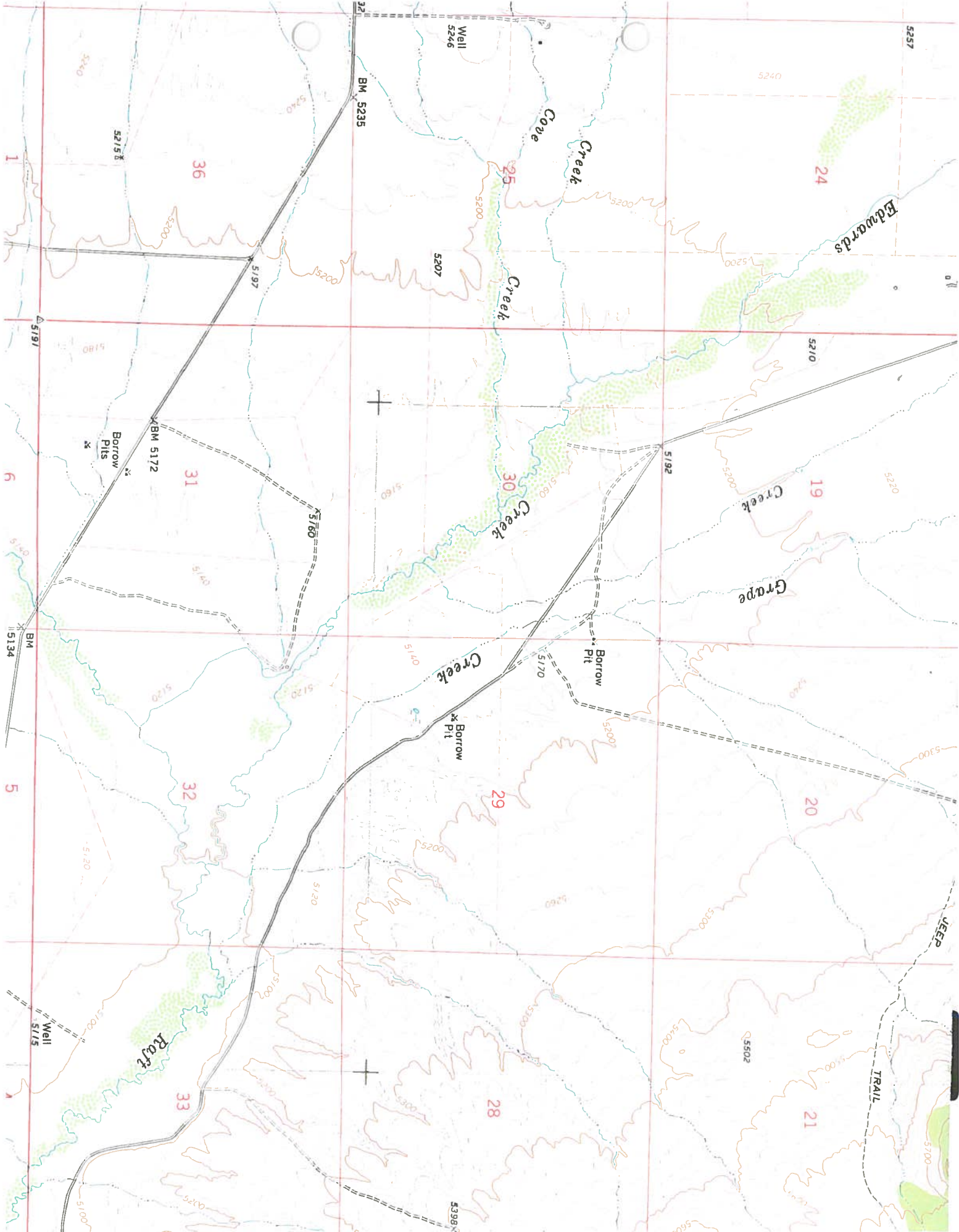
Robbin Hall
ROBBIN HALL
Deputy Clerk

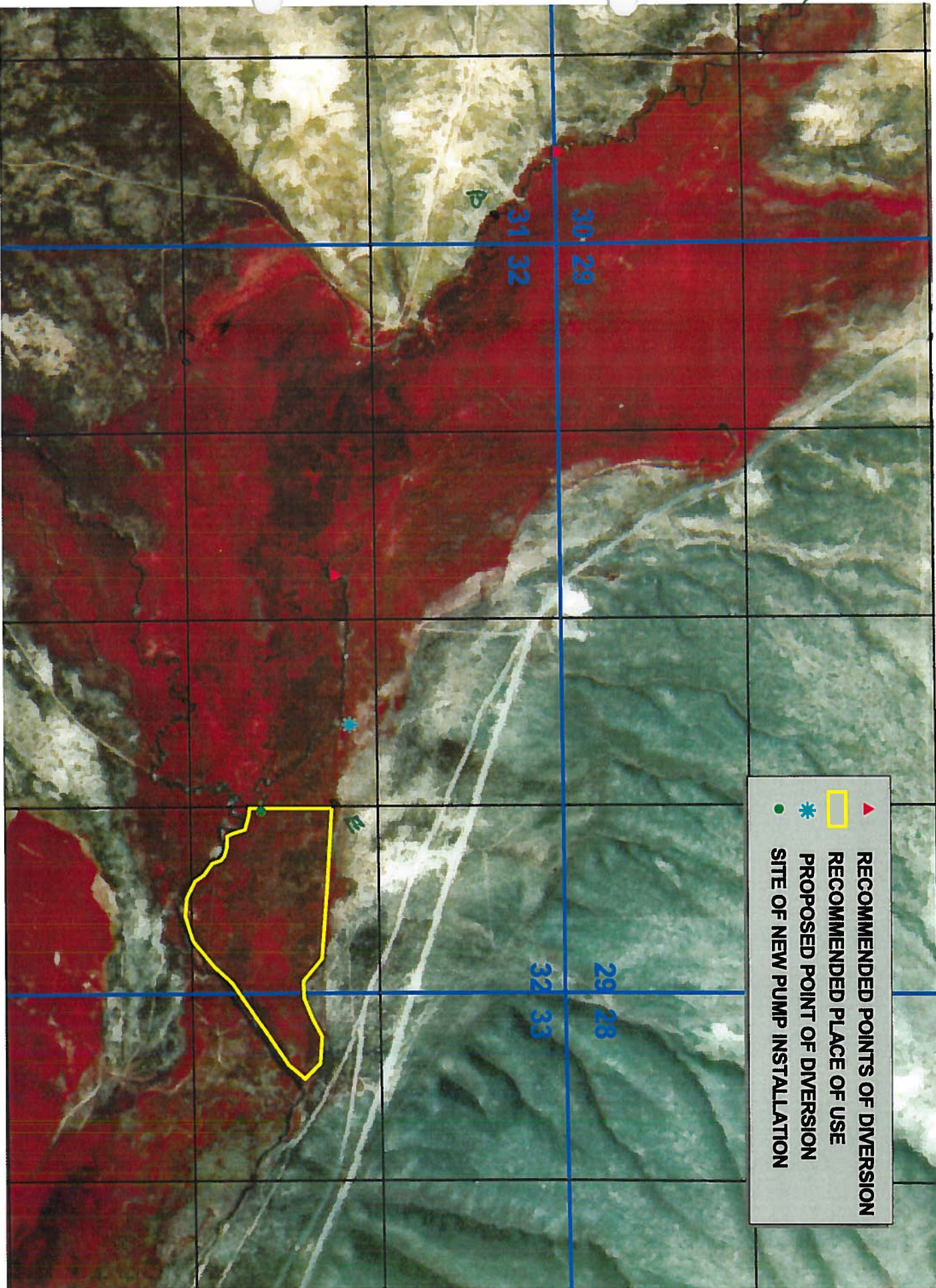


WILLIAM JONES RIGHT 43-10356

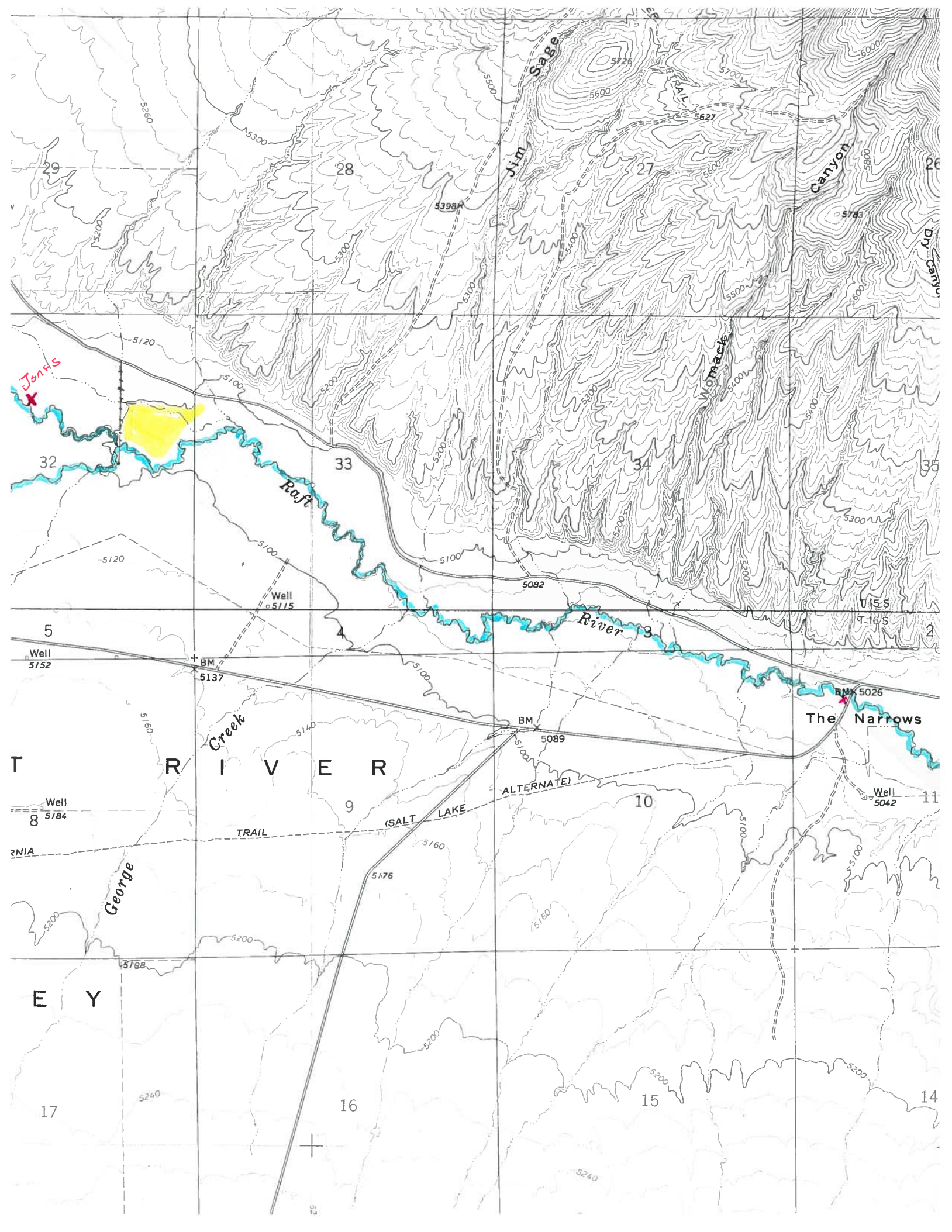


1992





1987 NAPP AERIAL PHOTO



1889 Feb.	5	Graham Geo, Jr.	Improvements on S 2 S. 1 Wagon, 2 Horses, ditch
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Sold to Cassia County Feb. 13 1889		Griffith J. T.	Improvements 1 Wagon, 2 Horses, 1 C.
---------------------------------------	--	----------------	---

★ 1889 Jan.,	8	Gwin Mrs. Frank	Improvements on N 6 and S 24 1/2 N 24 1/2 Sec. 3: ditch
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1889 Jan.,	12	Gee Austin	1 Cow
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Sold to Cassia County Feb. 13, 1889		Griffith Edward	Improvements on S 24 1/2. 1 Horse and 1 Wagon,
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**SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NO. 43-10356**

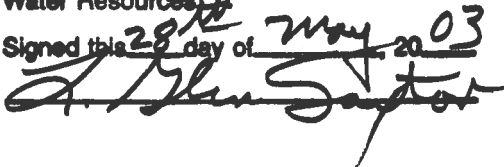
In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
David R. Tuthill Jr., Adjudication Bureau Chief

May 20, 2003

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 28th day of May, 2003


SCANNED

MAY 23 2003

I. INTRODUCTION

The Director of the Idaho Department of Water Resources ("IDWR" or "the Department") submits this Supplemental Director's Report regarding subcase number 43-10356 in accordance with Idaho Code § 42-1412(4) and Administrative Order I. This report sets forth the basis of the Department's recommendation for the above-listed water right and was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill, Jr., Adjudication Bureau Chief for IDWR.

The following employees from the Department have knowledge of the information contained in this report: David R. Tuthill, Jr., IDWR Adjudication Bureau Chief; Doug Jones, Water Rights Supervisor, IDWR, Southern Region Office; and Vikie Hancock Senior Water Resource Agent, IDWR, Southern Region Office.

II. SUMMARY OF THE ISSUES

Over the course of the proceedings, several issues, in addition to forfeiture, have arisen. The objections state that the water right should not exist. However, after the hearing on Interim Administration, additional issues have been illuminated. Specifically, if the water right is found to exist, then the source is not Almo Creek water but rather, is unnamed springs. Furthermore, even if the source of the water right is found to be Almo Creek, it should not be administered separately from Raft River.

III. PROCEDURAL BACKGROUND

Water right claim number 43-10356 was reported in IDWR's September, 2001, *Director's Report for Irrigation and Other Water Rights, Reporting Area 7, IDWR Basin 43*. Water Right number 43-10356 is owned by William D. Jones and Son ("Jones" or "Claimant"). Several objections were filed to this water right. The objections specifically state that no such

water right exists. Several settlement conferences both formally and informally were held between the parties. On December 5, 2002, a Joint Motion for Interim Administrative Order was filed by the objectors. A hearing was held on that Motion on April 1, 2003. The Special Master recommended and the SRBA Court ordered that Interim Administration of water right number 43-10356 be in accordance to the Director's Report and be administered separately from Raft River as part of Almo Creek Water District 43D.

IV. DISCUSSION

The Director's Report recommended water right number 43-10356 with a priority date of April 1, 1935, from the source Almo Creek, tributary to Raft River, with a quantity of 0.56 cfs. The place of use for the water right is limited to 28 total acres. 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 joins Raft River. Almo Creek is shown on the U.S. Geological Survey quadrangle map to be tributary to the Raft River in this area. (See Figure 2 attached hereto)¹ Almo Creek can be characterized as discontinuous, but connected, stream segments. Almo Creek flows on the surface in gaining reaches, and sinks below the surface in losing reaches, depending on irrigation practices and seasonal ground water table fluctuations. As Figure 1 depicts, Almo Creek naturally flows in a southeasterly direction but some man-made ditches have altered this natural course.

This report will provide the basis of the Department's recommendation primarily of the elements of priority date, point of diversion and source. Within that discussion, the basis of IDWR's recommendation for place of use and quantity will also be addressed. This report will

¹ Figure 2 is a map prepared by IDWR using information from the U.S. Geological Survey. The letter attached to Figure 2 explains that USGS misidentified Almo Creek and called the natural historic channel of Almo Creek, Edwards Creek. However, this error has been remedied and Almo Creek is properly identified on Figure 2 as prepared by IDWR.

also briefly discuss the Department's basis for including this water right to be administered as a separate water right from Raft River.

Priority Date. In 1928 the district court entered a decree that set forth the water rights from Raft River and its tributaries, including Almo Creek in *Albion Idaho Land Co. v. Adams*, Decree No. 992 (D. Idaho 1928) ("*Jobe Adams Decree*"). Claimant's grandfather was decreed water from Raft River for the farm that is claimed as part of water right number 43-10356. However, the Jobe Adams Decree did not mention this water right from Almo Creek; thus, the basis of water right number 43-10356 is beneficial use. When asked, the watermaster of district 43D had no recollection of water ever being administered to the Claimant from Almo Creek.

Claimant bases his claim on an 1888 quit claim deed from Franklin Gwin to Anna Gwin for 160 inches of the waters of Almo Creek and Raft River for use upon the Jones' property. An affidavit from Mr. Jones' mother, Leona Jones states that she remembers this land irrigated as early as 1916 when she was a child and that water was used whenever available from the channel by spring runoff and summer storms.

The 1956 and 1978 aerial photographs attached hereto as Exhibits A and B, clearly show a large ditch running from the west edge of the Jones' property straight west a little more than 1/8 mile to a meandering Almo Creek stream channel. (See Figure 1). An additional affidavit from Leona Jones was submitted in which she stated that she married Claimant's father, Oscar, in 1930 and remembers using water from Raft River and Almo Creek. A neighbor, Jim Sheridan, signed an affidavit stating that he witnessed Oscar and Leona Jones irrigating the subject property from Almo Creek and putting up hay in the early 1940s.

After reviewing the 1956 and 1978 aerial photos it also became apparent that the Claimant changed the channel of Raft River to flow through the SENE Section 32 and SWNW

Section 33 sometime after 1956 and before 1978. Since their method of irrigation from Almo Creek was surface flooding, this changing of the channel prevented any water from Almo Creek reaching lands now lying on the southeast side of the current Raft River channel. The Department recommended the water right based on aerial photos and the various affidavits for 28 acres of irrigation from Almo Creek, with a priority date of April 1, 1935. This water right is the most junior water right on Almo Creek and is junior to the objectors' water rights from Raft River.

Source and Point of Diversion. On June 20, 2001, a field exam was conducted for water right number 43-10356. The point of diversion was reviewed to locate it as it existed in 1987. The Department used GPS to identify the exact location of the point of diversion which was identified at that time as the west end of the straight ditch that runs more or less directly west from the Jones' fence-line to intersect a natural channel. (Point G on Figure 1). At the time of this exam, there was water in the natural channel and in the straight ditch. It was determined that the Jones' historical point of diversion should be identified as the beginning of the man-made ditch that had been apparent in 1956, 1978 and 1987 photos. It was also noted that this ditch had a substantial breach in the south bank where all the water spilled out into a deeply cut channel running toward the southeast and Raft River. (Point F on Figure 1). The GPS position of this breach was ascertained and it corresponded to the location of a channel that could be seen in the 1978 and 1987 aerial photos. (Point F on Figure 1) The upper point of diversion Jones' claimed in the SESESE Section 30 was recommended as claimed although that site was never examined and IDWR has since learned that this point of diversion does not exist.

On April 8, 2003, the Department again conducted a field visit for water right number 43-10356; Doug Jones and Vikie Hancock ("the agents") conducted the visit. Please refer to Figure

1 to trace the route taken during this exam. The exam began at Point A on Figure 1 at Sylvia Knight's point of diversion located in the NWSE Section 30. At this site there is a cement head gate that can divert water out of Almo Creek to the east. There was water flowing in Almo Creek at this spot and no water was being diverted. The agents then followed Almo Creek south, to a point in the NENENE Section 31, below the north slope of a prominent triangular bluff that juts into the meadow from the west, Point B on Figure 1. At this spot all the surface flow of Almo Creek is permanently routed into a ditch that follows the land contour around the bluff and south onto lands owned by Knight in the SWNW Section 32. At point B, high water flows can run over the top of the channel and flow into an original channel of Almo Creek. Lyle Woodbury, who leases the property from Sylvia Knight, was using the water in the ditch diverted at point B to irrigate these lands near point C on Figure 1. There was a shallow dry channel that could convey any unused water past point C toward Raft River.

From the top of the bluff, parts of the old natural channel of Almo Creek could be seen meandering to the southeast across the flat meadowland between the point of the bluff and the Jones' new pump installation, point D on Figure 1. The agents accessed this channel from the west fence line of the William Jones property, after first inspecting the site of Jones' pump.²

At the pump site, water was flowing unchecked through the cement dam to join Raft River. It was noted that water would need to be backed up to a depth of two feet to reach the intake of the pump. Water was flowing into the area directly above the dam from the northwest in what appeared to be a natural channel and from the north in a very small ditch, that ran down

² The Department is aware that the Claimant has in recent years changed his delivery system to include a concrete structure located across the historic natural channel of Almo Creek in Section 32 NESWSE. (Point D on 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 requires 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.

the west fence line of the Jones' property. The agents followed this small ditch 540 feet as it ran north then turned due west at point E on Figure 1. The small ditch continued for 575 feet to point F where it became a channel that was six feet wide with water as much as three feet deep. At this location on the channel, commonly referred to as the "wash-out" point F on Figure 1, water was leaking through the earthen embankment that had been reconstructed in 2002 to repair the wash-out. The water that was leaking from the embankment collected in a deeply cut channel which ran to the southeast toward the Jones' pump site and the Raft River channel. See Figure 1.

The agents then followed the large straight ditch further west from point F until it intersected with a deeply cut meandering channel containing a small flow of water coming from the northwest and also from the southwest, point G on Figure 1. At this location, some reconnaissance was done to determine the source of the water here. It was determined that water was springing up from the meadow floor and flowing in these and other small meandering channels, all generally southeasterly, and that the source was underflow from Almo Creek. It also appeared that at point G the natural channel of Almo Creek had been permanently altered many years ago to force creek water into the straight east-flowing ditch, and that any surface flow coming down the natural channel of Almo Creek had flowed through this man-made straight channel to point F and then through the "wash out" to Raft River. In fact, other than the Knight diversion around the bluff, (point B) the straight channel route has been the only one in existence for surface water in Almo Creek above point D to reach Raft River since its construction. Aerial photography shows that the straight ditch existed at least as early as 1956. The deeply incised channel of Almo Creek near the confluence with Raft River collects seep water and overland flows not otherwise appropriated and conveys the water to the Raft River.

Based on the April 8, 2003, field exam, it is apparent that the straight man-made ditch has become the natural channel of Almo Creek and should be so recognized by the Department. Therefore, the Department has confirmed that the source for the Claimant's water right number 43-10356 is Almo Creek. Furthermore, the Claimant's point of diversion should be identified in the NESWNE Section 32, T15S, R25E, where the earthen embankment repaired the washout, point F on Figure 1, and where a controlling device could be installed to allow flows in excess of Jones' water right to continue to Raft River.³ Attached hereto as Exhibit C is a corrected Director's Report that changes the Department's recommendation on the point of diversion element. This water right properly has only one point of diversion as described on Exhibit C.

Separate Administration Designation. The Department included water right number 43-10356 on its general provision for separate streams and listed this water right as being separate. That recommendation specifically states:

The following water rights from the following sources of water in Basin 43 shall be administered separately from all other water rights in Basin 43 in accordance with the prior appropriation doctrine as established by Idaho law.

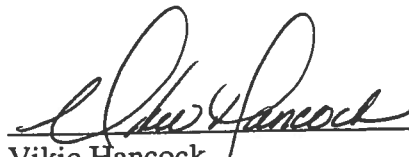
The Department included this water right as a separate water right based on language in the prior *Jobe Adams Decree* that designated Almo Creek as a separate source. *Albion Idaho Land Co. v. Adams*, Decree No. 992 (D. Idaho 1928). Water right number 43-10356 was not decreed in the *Jobe Adams Decree* but is a beneficial use right with a 1935 priority date. This water right has never been administered because it is a beneficial use right. Consequently, this water right, although technically within the boundaries of the Almo Creek Water District, 43D has never been actively administered as part of any water district.

³ At this time there is no way to measure water at the recommended diversion point located at point G and it may not even be reasonable to install such a device at this point. However, it would be fairly easy to install a measuring device at the proposed point of diversion at point F.

V. CONCLUSION

The above discussion provides the basis of the Department's recommendation for water right number 43-10356. The source of this water right is correctly described as Almo Creek. However, this water right only has one point of diversion as described on the corrected director's report attached hereto as Exhibit C. Almo Creek was altered from its natural channel years ago and the ditch running from point G on Figure 1 directly east should now be considered the channel of Almo Creek for administrative purposes. The recommendation should be corrected to reflect point F, in the NESWNE Section 32, T15S, R25E, as the point of diversion from the altered channel of Almo Creek.

SUBMITTED this 20 day of May, 2003.


Vikie Hancock
Senior Water Resources Agent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of May, 2003, I caused to be served a true and correct copy of the foregoing by the following method to:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☒ Facsimile

2. Copies to:

Jason D. Walker
Ling & Robinson
P.O. Box 396
Rupert, ID 83350

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Jason Miciak
392 Falls Ave.
P.O. Box 2632
Twin Falls, ID 83303-2632

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Clark Ward
HC 61 Box 1560
Malta, ID 83342

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Laci Lew
Signature of Person Mailing Form

9-17-56

YT-3R

DEPT. OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

ORIGINAL LOCATION
110' EAST 210' SOUTH
THROUGH STONE PILE

RECEIVED

T 15 S R 25 E Sec 33, 33
T 16 S R 25 E Sec 33, 33

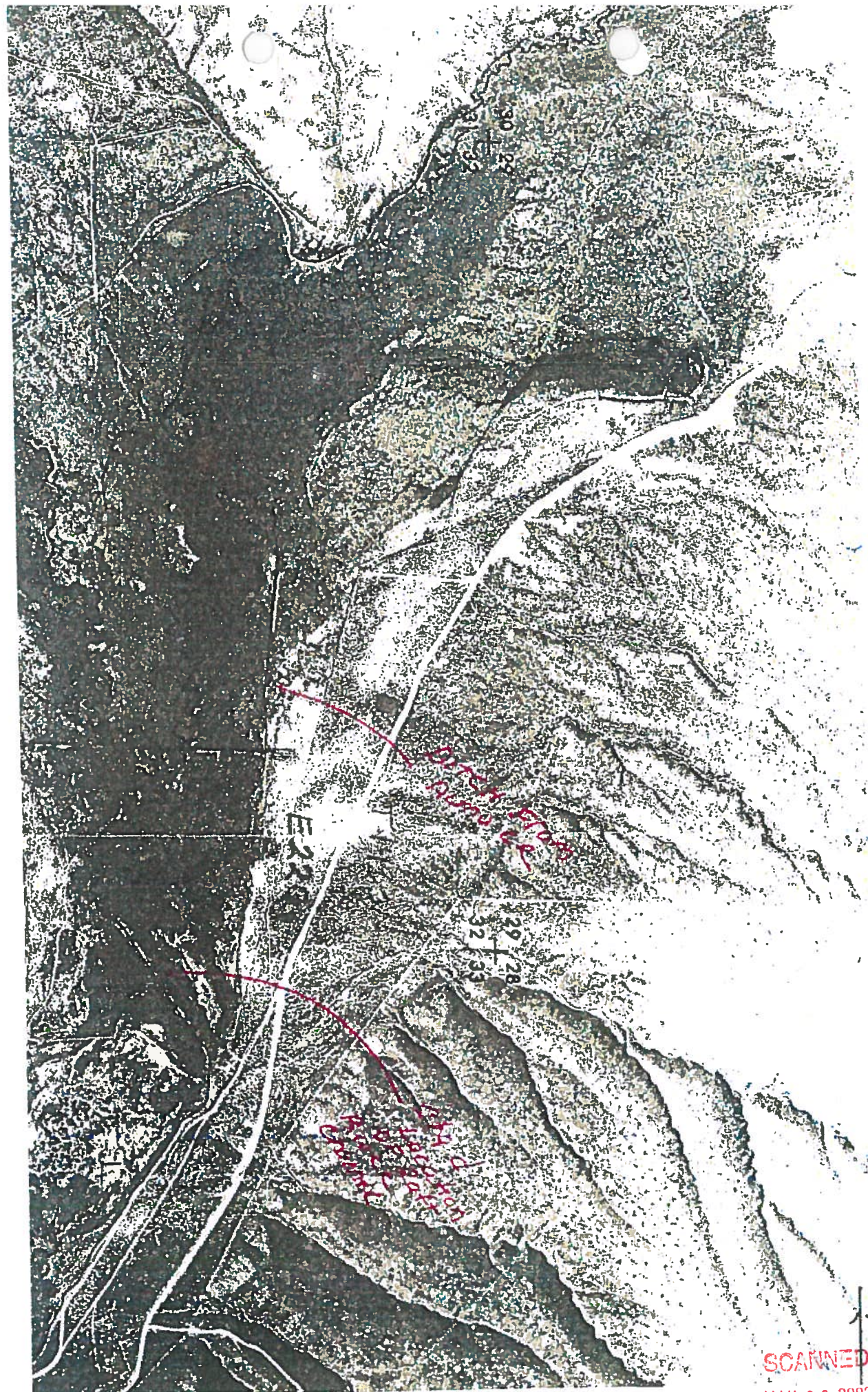
1956

A43-10356

SCANNED

EXHIBIT A

MAY 23 2003



1978 ASCS Aerial PHOTO

SCANNED
MAY 23 2003

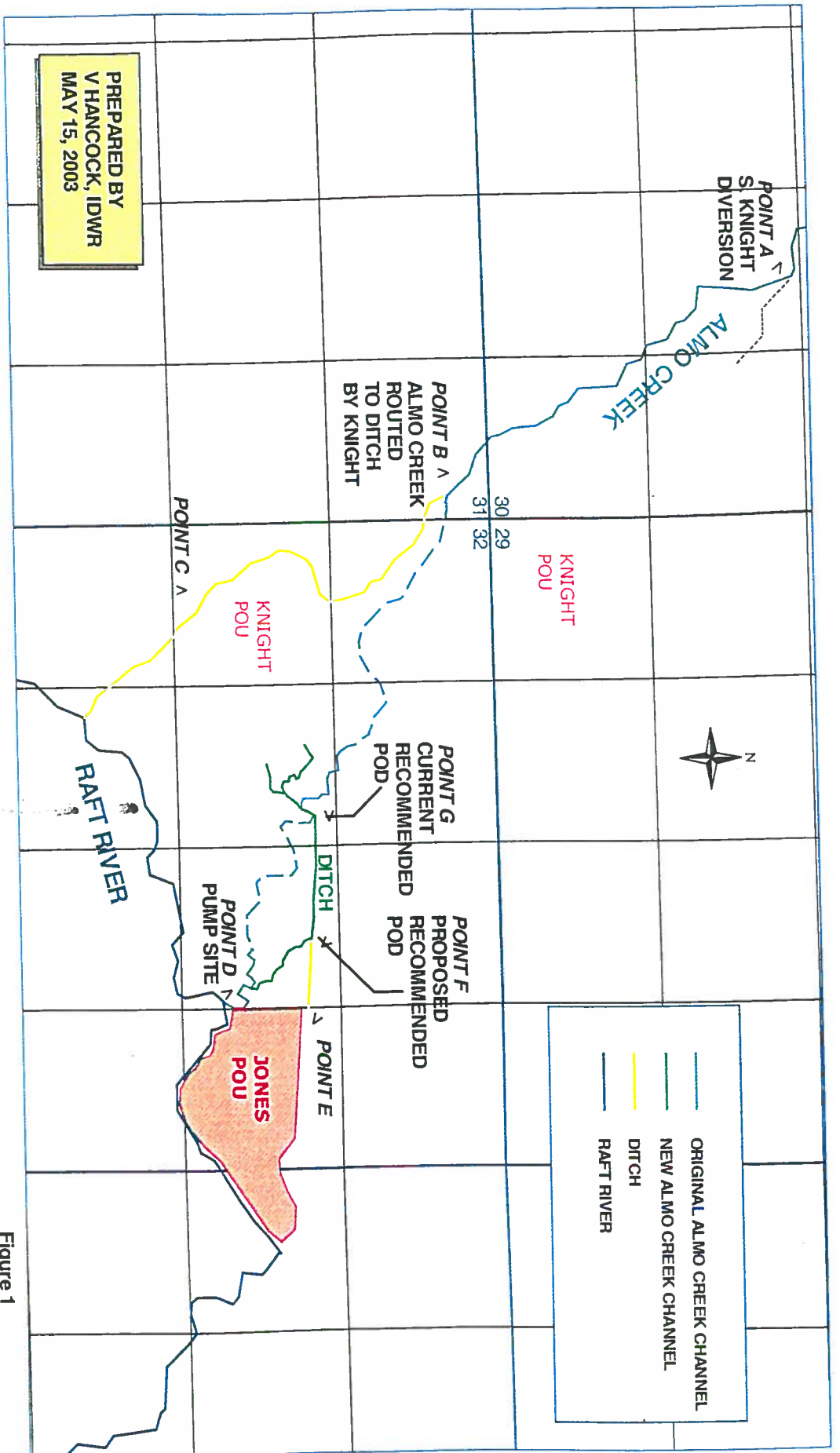


Figure 1

SCANNED

MAY 23 2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 43-10356

NAME AND ADDRESS: WILLIAM D JONES & SONS
C/O WILLIAM D JONES
PO BOX 152
ALMO ID 83312

SOURCE: ALMO CREEK

TRIBUTARY: RAFT RIVER

QUANTITY: 0.560 CFS

PRIORITY DATE: 04/01/1935

POINT OF
DIVERSION:

~~T15S R25E S30 SESESE~~ Within CASSIA County
T15S R25E S32 ~~NESENW~~ NESWNE Within CASSIA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
IRRIGATION

PERIOD OF USE
04/01 10/31

QUANTITY
0.560 CFS

PLACE OF USE:

IRRIGATION Within CASSIA County

T15S R25E S32

SENE

23.0

T15S R25E S33

SWNW

5.0

28 ACRES TOTAL

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

SOURCE IS ALSO KNOWN AS SOUTH ALMO CREEK.

Water Right 43-10356

1

EXHIBIT C

SCANNED
MAY 23 2003

PROPOSED -
NO DE
5/29/03
UH

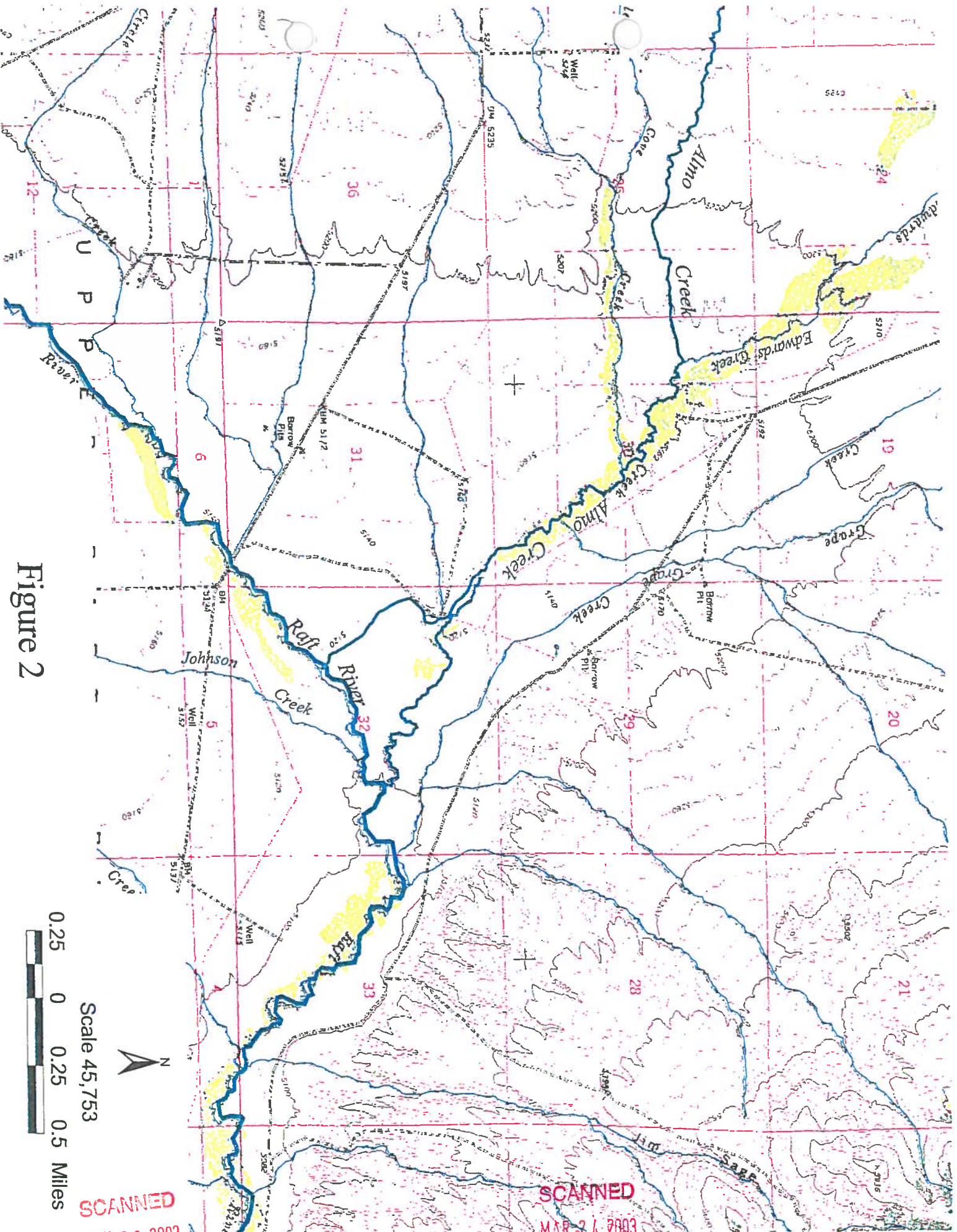
Figure 2

Scale 45,753
0.25 0 0.25 0.5 Miles



SCANNED
MAY 23 2003

SCANNED
MAR 27 2003





UNITED STATES BOARD ON GEOGRAPHIC NAMES

In reply please use this address:
U. S. Geological Survey
523 National Center
Reston, Virginia 20192-0523

RECEIVED

APR 02 2001

March 13, 2001

Ms. Vikie Hancock
Senior Water Resources Agent
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Dear Ms. Hancock:

We are pleased to inform you that the U.S. Board on Geographic Names, at its February 8, 2001 meeting, approved the proposal to change the application of the names Almo Creek and Edwards Creek for streams in Cassia County. This decision was made in agreement with the recommendation of the Idaho Geographic Names Advisory Council. The changes have been entered into the Nation's official automated geographic names repository and will appear in Decision List 2001. The entries will read as follows.

Almo Creek: stream, 21 km (13 mi) long, in Sawtooth National Forest; heads in the Albion Mountains, at the S end of Almo Park at 42°08'49"N, 113°43'55"W, flows generally E and SE through the community of Almo, to join Raft River at the mouth of Johnson Creek; named for the nearby community of Almo; Cassia County, Idaho; Tps 15&14S, Rgs 25-23E, Boise Mer; 42°04'33"N, 113°33'16"W; USGS map - Jim Sage Canyon 1:24,000 (mouth of feature); Not: Edwards Creek - in part, South Almo Creek.

Edwards Creek: stream, 11.3 km (7 mi) long, in Sawtooth National Forest; heads 1.9 km (1.2 mi) S of Cache Peak at 42°10'29"N, 113°39'22"W, flows SSW for 1.6 km (1 mi) then SE for 9.7 km (6 mi) to enter Almo Creek (q.v.) 3.2 km (2 mi) ESE of the community of Almo; Cassia County, Idaho; Tps 15&14, Rgs 25&24E, Boise Mer, 42°08'49"N, 113°43'55"W; USGS map - Jim Sage Canyon 1:24,000.

Sincerely yours,

Roger L. Payne

Executive Secretary

U.S. Board on Geographic Names

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 28th day of May 2003

SCANNED

MAY 23 2003



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

May 7, 2003

VIA FACSIMILE
(208) 436-6804
(208) 734-5605

Jason D. Walker
Ling & Robinson
PO Box 396
Rupert, Idaho 83350

Jason Miciak
392 Falls Ave
PO Box 2632
Twin Falls, ID 83303-2632

Clark Ward
HC 61 Box 1560
Malta, ID 83342

RE: *Snake River Basin Adjudication (SRBA)*
Recommendation 43-10356, William D. Jones & Son

Dear Parties:

This letter follows-up on the letter sent to you yesterday from Vikie Hancock. As she discussed in her letter, the Department intends to discuss changes to the recommendation for the point of diversion for water right number 43-10356 in the 706 Report that will be filed a week before trial in this matter. The Department believes that this is the only proper point of diversion for this water right.

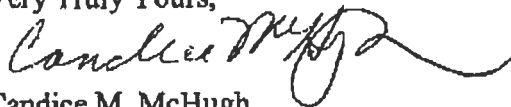
The Department also intends to discuss the Department's inclusion of water right 43-10356 as a separate water right in its 706 Report. The Department acknowledges that there are two sides to this issue. The Department will not adamantly defend its recommendation that the water right be considered separate from Raft River water rights.

May 7, 2003
Page 2

and thus immune from calls from Raft River users. It will be left to the parties to develop the facts and legal argument to support whether the water right is properly separate or not.

Perhaps this information will assist you in reaching a settlement of this matter or narrow this issues for trial. If the Department can be of any further assistance to you in this matter, please let me know. You can reach me at (208) 327-5404.

Very Truly Yours,



Candice M. McHugh
Deputy Attorney General, IDWR

cc: Vikie Hancock

May 6, 2003

VIA FACSIMILE
(208) 436-6804
(208) 734-5605

Jason D. Walker
Ling & Robinson
PO Box 396
Rupert, Idaho 83350

Jason Miciak
392 Falls Ave
PO Box 2632
Twin Falls, ID 83303-2632

Clark Ward
HC 61 Box 1560
Malta, ID 83342

RE: Snake River Basin Adjudication (SRBA)
Recommendation 43-10356, William D. Jones & Son

Dear Parties:

I am writing this letter to keep you updated on the Department's position regarding the recommendation of claim number 43-10356. On April 8, 2003, my supervisor, Doug Jones and I met with Buddy Ward, current water master for Almo Creek water district 43D. I requested this meeting with Mr. Ward so that he could assist us in touring the lower reaches of Almo Creek.

Based on our observations the lower reaches of Almo Creek can be characterized as discontinuous, but connected, stream segments. Almo Creek flows on the surface in gaining reaches, and sinks below the surface in losing reaches, depending on irrigation practices and seasonal ground water table fluctuations. As the attachment hereto depicts, Almo Creek naturally flows in a southeasterly direction but some man-made ditches have altered this natural course.

The three of us began at Sylvia Knight's point of diversion located in the NWSE Section 30 [point A on attachment]. At this site there is a cement head gate that can divert water out of Almo Creek to the east. There was water flowing in Almo Creek at this spot and no

water was being diverted. We followed Almo Creek south, to a point in the NENENE Section 31, below the north slope of a prominent triangular bluff that juts into the meadow from the west [*point B on attachment*]. At this spot all the surface flow of Almo Creek has been permanently routed into a ditch that follows the land contour around the bluff and south onto lands owned by Knight in the SWNW Section 32. At point B, high water flows can run over the top of the channel and flow into an original channel of Almo Creek. Lyle Woodbury, who leases the property from Sylvia Knight, was using the water in the ditch diverted at point B to irrigate these lands [*point C on attachment*]. There was a shallow dry channel that could convey any unused water past point C toward Raft River.

From the top of the bluff, parts of the old natural channel of Almo Creek could be seen meandering to the southeast across the flat meadowland between the point of the bluff and the Jones' new pump installation [*point D on attachment*]. We accessed this channel from the west fence line of the William Jones property, after first inspecting the site of Jones' pump.

At the pump site, water was flowing unchecked through the cement dam to join Raft River. It was noted that water would need to be backed up to a depth of two feet to reach the intake of the pump. Water was flowing into the area directly above the dam from the northwest in what appeared to be a natural channel and from the north in a very small ditch, that ran down the west fence line of the Jones' property. We followed this small ditch as it ran north then turned due west [*point E on attachment*] where it soon became a channel that was six feet wide with water as much as three feet deep. At the location on the channel previously referred to by me and others as the "wash-out" [*point F on attachment*], water was leaking through the earthen embankment that had been reconstructed in 2002 to repair the wash-out. The water that was leaking collected in a deeply cut channel which ran to the southeast toward the Jones' pump site and the Raft River channel.

We followed the large straight ditch further west until it intersected with a deeply cut meandering channel containing a small flow of water coming from the northwest and also from the southwest [*point G on attachment*]. At this location, some reconnaissance was done to determine the source of the water here. It was determined that water was springing up from the meadow floor and flowing in these and other small meandering channels, all generally southeasterly, and that the source was underflow from Almo Creek.

It also appeared that at point G the natural channel of Almo Creek had been permanently altered many years ago to force creek water into the straight east-flowing channel, and that any surface flow coming down the natural channel of Almo Creek had flowed through the man-made straight channel to point F and then through the "wash out" to Raft River. In fact, other than the Knight diversion around the bluff, the straight channel route has been the only one in existence for surface water in Almo Creek above point G to reach Raft River since its construction. My earliest information shows that the straight ditch existed

at least as early as 1957. The deeply incised channel of Almo Creek near the confluence with Raft River collects seep water and overland flows not otherwise appropriated and conveys the water to the Raft River.

From my observations in the field April 8th, I believe that my recommendation of the source of Almo Creek for Jones' right 43-10536 is correct, however my points of diversion were incorrectly described. After review it is appropriate for the Department to recognize the straight man-made ditch as the current Almo Creek channel, and Jones' point of diversion should be identified in the NESWNE Section 32, T15S, R25E, where the earthen embankment repaired the wash-out (*point F on attachment*).

The proposed change in my point of diversion recommendation will be included in the Department's 706 Report to the SRBA Court. The Department's 706 Report, which will outline the basis of my recommendation in addition to my current conclusions, will be submitted approximately one week before the scheduled trial date of May 29, 2003.

Sincerely,

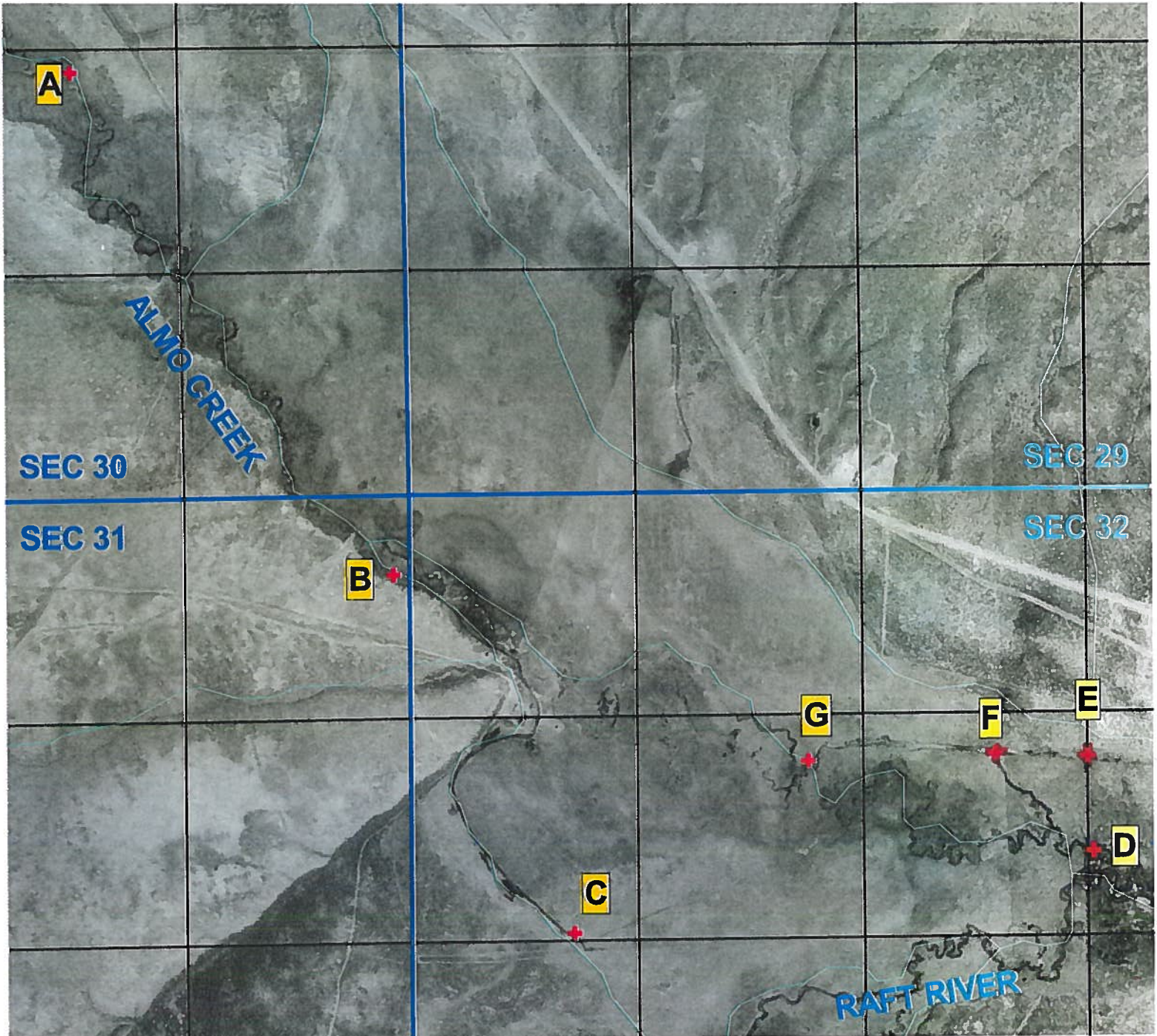


Vikie Hancock
Sr. Water Resource Agent
Southern Regional Office, Twin Falls

cc:
Lyle Woodbury

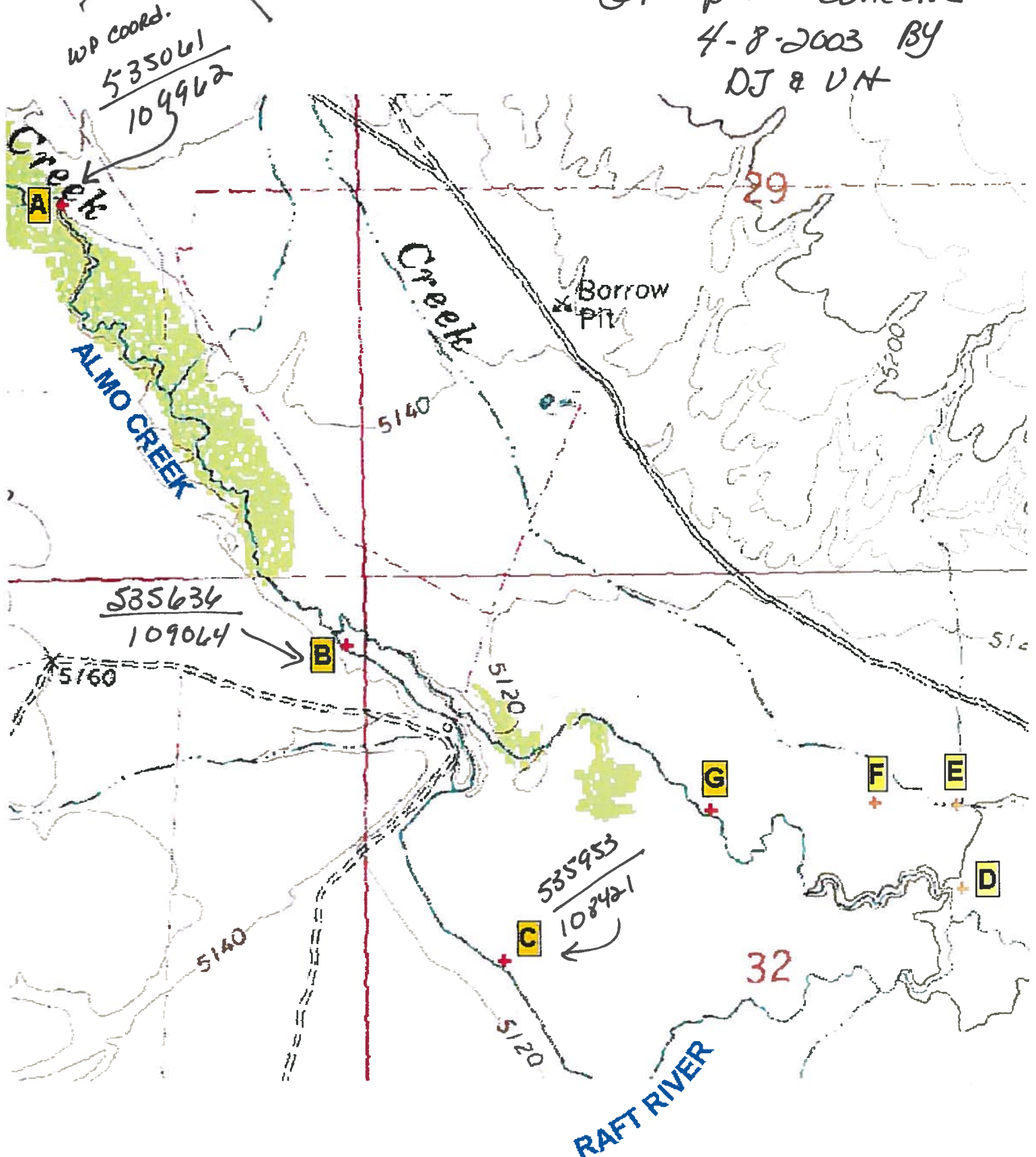
ATTACHMENT TO LETTER
APRIL 30, 2003
43-10356
WILLIAM D. JONES & SON

1992 AERIAL PHOTO



ATTACHMENT TO LETTER
APRIL 30, 2003
43-10356
WILLIAM D. JONES & SON

GPS points collected
4-8-2003 BY
DJ & VN



Floyd Knight Diversion
epe 13 535061 109962

wp/p 13 Along on D. Fairview
3:19 upstream of house on point
535636 109064

wp/p 14 535953 108421
Floyd Knight diversion OR / 2nd div

wp 14 536385 108746
3:21

~~44882~~ ~~5038~~



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

April 3, 2003

Joyce and Roscoe Ward
PO Box 108
Almo ID 83312

Re: William D. Jones Dam on Claim No. 43-10356

Dear Mr. and Mrs. Ward :

The Department received your letter dated April 1, 2003, requesting that the boards be removed on the Joneses Dam located on Almo Creek so that the water is allowed to go into the Raft River. I spoke with the Joneses' attorney, Jason Walker, today and he assured me that he will have his clients pull those boards just as soon as he talks to them. I also received a follow-up voice mail from Jason stating that he had left a message with his clients to remove those boards and was hoping that that would be done by this afternoon.

If the boards are not removed soon, please contact me at 208-327-5404 and I will follow-up on this matter.

Very truly yours,

A handwritten signature in cursive script, reading "Candice M. McHugh", is positioned above the typed name.

CANDICE M. McHUGH
Deputy Attorney General
Idaho Department of Water Resources

c: Jason Walker
Allen Merritt
Vikie Hancock ✓

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

RECEIVED
APR - 3 2003
Department of Water Resources
Southern Region

Allen Meritt
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

April 1, 2003

RE: William D. Jones Dam on Claim No. 43-10356

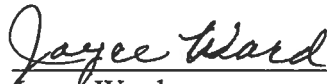
Dear Mr. Merritt:

On March 14th, 2003 the Department of Water Resources submitted a new 'RECOMMENDATION OF THE IDAHO DEPARTMENT OF WATER RESOURCES FOR INTERIM ADMINISTRATION FOR SUBCASE NO. 43-10356'. As shown at the bottom of the 3rd page "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". We are enclosing a copy of the Recommendation.

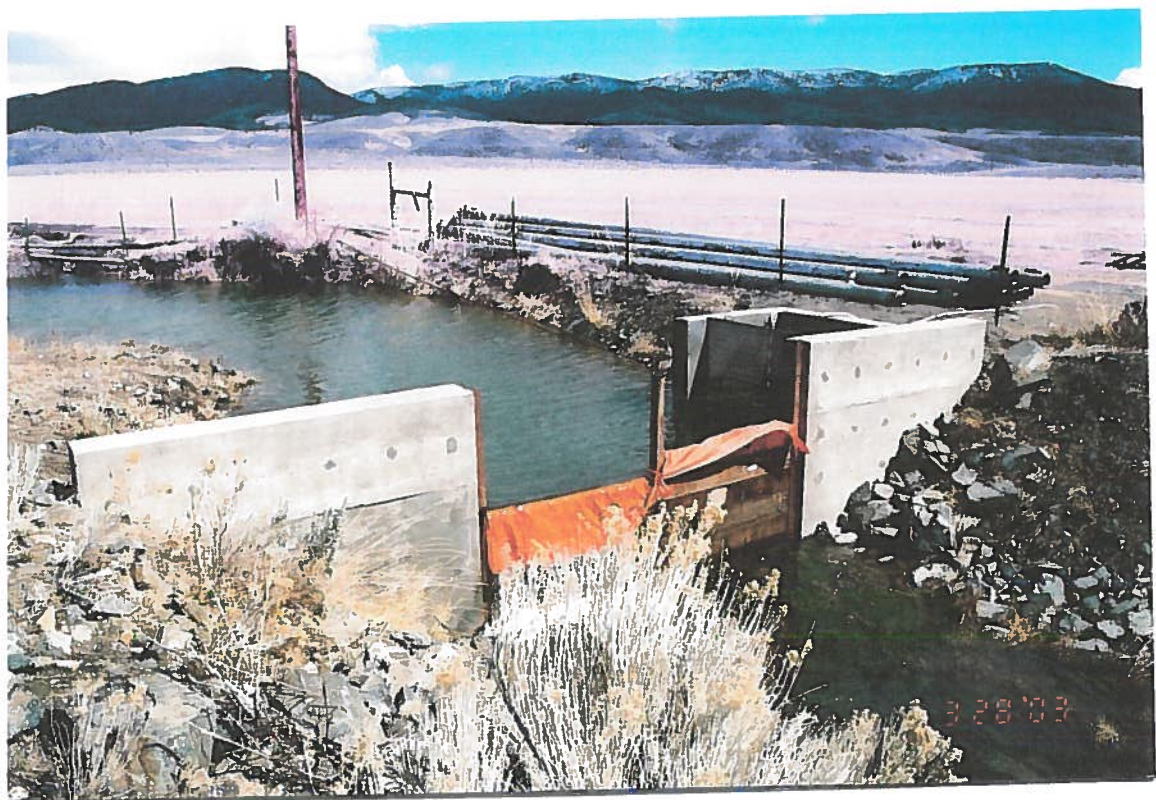
Recently Nolan Branch, Rodney Hall, Roscoe Ward, and Olene Warr were up and looked at the Joneses diversion. As shown in the accompanying photograph Joneses have replaced the boards in their dam and are prepared to pump water again this summer. As you are aware you have told them not to use the pump. As you can see in the recommendation quoted above, they are improperly impounding water which is a tributary to Raft River and interfering with the senior water rights on Raft River.

We are hereby requesting that the Department of Water Resources do whatever is necessary to see that the boards are removed and the water is allowed to go into Raft River. Your attention on this matter will be greatly appreciated.

Respectfully,


Joyce Ward

Post-it® Fax Note	7671	Date	4-3-03	# of pages	1
To	Candice McHugh	From	Vikie H		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			



2003 APR -3 PM 3:48

FILED
TWIN FALLS CO., IDAHO

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

) Subcase 43-10356
) (William D. Jones and Son)
)
) SPECIAL MASTER REPORT AND
) RECOMMENDATION RE: INTERIM
) ADMINISTRATION and ORDER
) SETTING DEADLINE TO FILE
) MOTIONS TO ALTER OR AMEND

FINDINGS OF FACT

Claim

William D. Jones and William D. Jones and Son, P.O. Box 152, Almo, Idaho 83312, filed a *Notice of Claim to a Water Right* on June 6, 1989, claiming 2 cfs from South Almo Creek and laterals to irrigate 73 acres in Cassia County from March 15 to November 15 with a priority date of April 30, 1879, based on beneficial use.

Director's Report

The Director of the Idaho Department of Water Resources filed his *Director's Reports for Irrigation and Other, Reporting Area 7, IDWR Basin 43* on September 28, 2001. The Director recommended the claim to William D. Jones and Son ("Jones and Son") for .56 cfs from Almo Creek ("also known as South Almo Creek") to irrigate 28 acres from April 1 to October 31 with a priority date of April 1, 1935, based on beneficial use.

Objections

Roscoe and Joyce Ward filed an *Objection* on January 31, 2002, alleging the water right should not exist. Nolan K. Branch, Clark W. Ward, Warr Brothers (Olene Warr) and Reid S. Stewart filed the same *Objection* on February 4, 2002, and Rodney Hall filed his *Objection* on

SPECIAL MASTER REPORT AND RECOMMENDATION RE: INTERIM ADMINISTRATION and ORDER SETTING DEADLINE TO FILE MOTIONS TO ALTER OR AMEND

February 7, 2002. On July 15, 2002, the Special Master entered an *Order Dismissing Objection* dismissing Reid S. Stewart's *Objection* based on his motion. Jones and Son did not object to the Director's recommendation.

Joint Motion for Interim Administration

On December 5, 2002, objectors Roscoe Ward, Nolan K. Branch, Rodney Hall and Olene Warr filed a *Joint Motion for Interim Administrative Order* seeking interim administration of 43-10356 "as part of Water District 43B and requiring the claimants [Jones and Son] to follow the laws of the State of Idaho and limiting the usage of this claim [43-10356] to that which has been recommended by the Department of Water Resources." On February 19, 2003, objectors Roscoe and Joyce Ward filed a *Certificate of Service* completing service of notice on all claimants of water from the Raft River and Almo Creek who might be adversely affected by the requested order of interim administration pursuant to I.C. § 42-1417 (2)(b).

IDWR Recommendation

On March 14, 2003, IDWR filed its *Recommendation for Interim Administration for Subcase No. 43-10356*. First, IDWR included 43-10356 within its general provision for "separate streams" and recommended 43-10356 as a separate water right from Raft River. That general provision reads:

The following water rights from the following sources of water in Basin 43 shall be administered separately from all other water rights in Basin 43 in accordance with the prior appropriation doctrine as established by Idaho law.

Next, IDWR recommended that claim 43-10356 be administered pursuant to the current *Director's Report*. That means that .56 cfs may be diverted at 2 points of diversion and applied to irrigate 28 acres. IDWR noted that Jones and Son recently changed its delivery system to include a concrete dam across the natural channel of Almo Creek and its pumping from the pool above that dam "may cause injury to senior Raft River water rights and may improperly impound unnamed springs that are tributary to Raft River."¹

¹ Figure 1 attached to IDWR's *Recommendation for Interim Administration for Subcase No. 43-10356* is a useful depiction of the facts reported by IDWR.

Therefore, the Department recommends that the claimant [Jones and Son] allow water to pass through the existing concrete structure [dam] The claimant may pump water further north of the concrete structure either directly from the ditch . . . 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 [emphasis added].

Finally, as to the objectors' request that claim 43-10356 be administered as part of Water District 43B (Raft River), IDWR noted the claim is currently considered to be within Water District 43D (Almo Creek): "The Department sees no reason that this should be changed at this time."

Pre-Hearing Agreement

Just before the hearing on the objectors' *Joint Motion for Interim Administrative Order*, Jones and Son filed its *Response to Reply to Memorandum in Opposition to Objectors' Joint Motion for Interim Administration Order*. It wrote: "Claimant Jones has no objection to an *Order for Interim Administration* being entered in accordance with the recommendation of IDWR for interim administration."

Hearing

A hearing on the objectors' *Joint Motion* was held at the SRBA Courthouse in Twin Falls, Idaho. Jason D. Walker appeared for claimant Jones and Son (William and Annalee Jones and their son, Rod Jones); objectors Roscoe and Joyce Ward, Nolan K. Branch, Rodney Hall and Olene Warr appeared *pro se*; and Candice M. McHugh appeared for IDWR, along with Vikie Hancock, senior water resources agent.

CONCLUSIONS OF LAW

Prima Facie Weight of IDWR Director's Recommendation

Idaho Code § 42-1411 (4) states that, "Upon filing with the court, the director's report . . . shall constitute prima facie evidence of the nature and extent of the water rights acquired under state law." That means the elements of water rights recommended in director's reports are presumed to be true unless disproved by some evidence to the contrary:

The Legislature's direction that the contents of the Director's report shall constitute prima facie evidence of some water right claims was a permissible exercise of the authority, recognized in I.R.E. 301, to create an evidentiary presumption. Unless that evidentiary presumption is overcome by the evidence or the application of that presumption is clearly erroneous on its face, the facts set forth in the Director's report are established.

In Re SRBA Case No. 39576, 128 Idaho 246, 256, 912 P.2d 614, 624 (1995).

There is no reason to believe that IDWR's *Recommendation for Interim Administration for Subcase No. 43-10356* should be treated any differently than its *Director's Reports for Irrigation and Other, Reporting Area 7, IDWR Basin 43*. In other words, both are entitled to prima facie weight by statute.

Witness Testimony

The objectors' main concerns with IDWR's *Recommendation for Interim Administration for Subcase No. 43-10356* had to do with the recommended source and the "separate streams" designation.² The objectors want to prevent Jones and Son from diverting spring water rising immediately upstream from its recently constructed cement dam in Almo Creek near the junction of Almo Creek and the Raft River. The objectors do not agree 43-10356 should be administered separately from the Raft River. They maintain that particular spring water is tributary to the Raft River from which they divert downstream below the junction. For that reason, they want 43-10356 administered as part of Water District 43B (Raft River) instead of Water District 43D (Almo Creek).

David Sundberg, water master for Water District 43B (Raft River), testified that much of the water impounded by Jones and Son's cement dam arises from springs immediately upstream from the dam. If the dam were not there, that water would flow down a short stretch of the natural channel of Almo Creek and join the Raft River. Mr. Sundberg thought Jones and Son's upper diversion point in § 30 (below the Knight diversion point, not marked on Figure 1) was no longer usable.³ Mr. Sundberg doubted that Jones and Son could keep water in the natural channel of Almo Creek at its lower diversion point in § 32 because of the greater depth of the

² Senior water resources agent Vikie Hancock testified that IDWR based its recommendation for "separate stream" designation of 43-10356 solely on the earlier "Jobe Adams Decree." It is not clear whether that decree binds IDWR and all the parties to this matter. Jones and Son based their claim for 43-10356 on beneficial use, not any decree.

³ William Jones agreed that the upper diversion point in § 30 is unusable without significant improvements. That suggests it has not been used for some time and may implicate partial forfeiture.

"lake ditch" (Jones Ditch) versus the natural channel – at least not without substantial improvements. Plus, he said there is currently no way to measure the flow of water being diverted from Almo Creek into the Jones Ditch; hence, there will be problems measuring and controlling Jones and Son's recommended quantity of .56 cfs.

Perhaps because of the relatively flat gradient of the land, the witnesses had trouble differentiating between the natural channel of Almo Creek and developed land and ditches. In some portions, man-made ditches have become the "natural" channel of Almo Creek.

Propriety of IDWR's Recommendation

The irrigation season for many water rights in the Almo Creek and the Raft River area began April 1; objector Nolan K. Branch's irrigation season began March 15. Given the immediacy of this dilemma and the need for the water master to have some guidance to deliver water this season, the proper course is for the Court to order interim administration in accordance with IDWR's *Recommendation for Interim Administration for Subcase No. 43-10356*. At this early stage in the proceedings, there is simply not enough time for IDWR and the Court to explore every fact to arrive at a decision. The subcase begs for more hydrologic and legal exploration. But in the meantime, the parties need water and the water master needs direction of how to deliver that water.

IDWR's *Recommendation* is the best informed direction the Court can give the parties short of trial which is set for May 29, 2003. The real test in the short term is whether the water master can effectively carry an order of interim administration. Particularly, can the water master make certain that when Jones and Son pumps water north of the concrete dam, either directly from the ditch or from a different holding pond, "such pond does not intercept springs that would be tributary to either Almo Creek or the Raft River?" No easy task given the terrain.

There is no apparent reason why claim 43-10356 should not be administered in the interim as part of the Almo Creek Water District (Water District 43D), separately from the Raft River. The water master for Water District 43D will be required to perform a purely ministerial duty in accordance with the Court's order of interim administration, limited by the elements recommended in the September 28, 2001 *Director's Reports for Irrigation and Other, Reporting Area 7, IDWR Basin 43*. A copy of the Director's recommendation is attached hereto. Of course, the issues of source and separate streams will be addressed later at trial, along with

alleged unauthorized changes in the Jones and Son's diversion / delivery system and place of use.

RECOMMENDATION

THEREFORE, IT IS RECOMMENDED that the Presiding Judge enter an *Order for Interim Administration of Claim 43-10356* as recommended by IDWR in its *Recommendation for Interim Administration for Subcase No. 43-10356*.

ORDER SETTING DEADLINE TO FILE MOTIONS TO ALTER OR AMEND

In order ensure timely resolution of this matter, given the recent beginning of the irrigation season in the Almo Creek and Raft River area,

THEREFORE, IT IS ORDERED that all claimants of water from the Raft River and Almo Creek who might be adversely affected by the requested order of interim administration and who disagree with this *Special Master Report and Recommendation Re: Interim Administration* shall file with the SRBA Court a motion to alter or amend no later than **Thursday, April 17, 2003.**

DATED April 3, 2003.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER REPORT AND RECOMMENDATION RE: INTERIM ADMINISTRATION & ORDER SETTING DEADLINE was mailed on April 03, 2003, with sufficient first-class postage to the following:

WILLIAM D JONES AND SON

Represented by:
ROGER D LING
PO BOX 396
RUPERT, ID 83350
Phone: 208-436-4717

WARR BROTHERS
C/O OLENE WARR
2231 S 2350 E
MALTA, ID 83342

CLARK W WARD
HC 61 BOX 1560
MALTA, ID 83342
Phone: 208-824-5560

ROSCOE WARD
PO BOX 108
ALMO, ID 83312
Phone: 208-824-5591

RODNEY HALL
PO BOX 631
MALTA, ID 83342
Phone: 208-645-2517

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

NOLAN K BRANCH
1823 S 2330 E
MALTA, ID 83342
Phone: 208-420-0326

LAWRENCE G. WASDEN
Attorney General

CANDICE M. MCHUGH
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208)327-5404
Fax: (208)327-5400
Idaho State Bar #5908

RECEIVED

MAR 24 2003

Department of Water Resources

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
MAR 14 2003	
By _____	Clerk Deputy Clerk

**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

) Subcase No. 43-10356

)
)
)
) Case No. 39576
)
_____)

**AFFIDAVIT OF
VIKIE HANCOCK**

STATE OF IDAHO)
) ss.
County of Twin Falls)

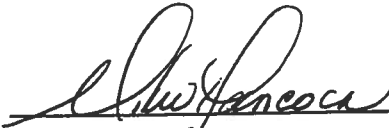
I, Vikie Hancock, being first duly sworn on oath, depose and state as follows:

1. I am a Senior Water Resources Agent with the Idaho Department of Water Resources in the Southern Region Office. I make this affidavit based upon my own personal knowledge.

2. I adopt as my testimony, and incorporate in this Affidavit, the Recommendation of the Idaho Department of Water Resources For Interim Administration

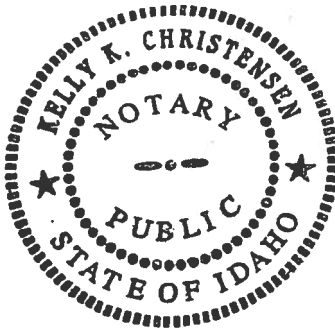
For Subcase No. 43-10356, a copy of which is attached as Exhibit 1. This Recommendation was prepared pursuant to Orders of this Court.

DATED this 14 day of March, 2003.



Vikie Hancock
Senior Water Resources Agent
Idaho Department of Water Resources

SUBSCRIBED AND SWORN before me this 14th day of Mar, 2003.




NOTARY PUBLIC FOR IDAHO
Residing at:
My commission expires:

CERTIFICATE OF SERVICE

I certify that on March 14, 2003, I caused to be served true and correct copies of the Affidavit of Vikie Hancock in subcase No. 43-10356, to the following persons, in the manner indicated and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

☐ Overnight Mail
☐ Regular Mail
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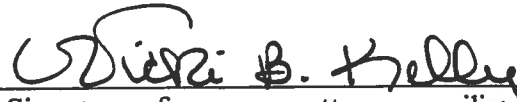
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**RECOMMENDATION OF
THE IDAHO DEPARTMENT OF WATER RESOURCES
FOR INTERIM ADMINISTRATION
FOR SUBCASE NO. 43-10356**

**In Re SRBA
Twin Falls County Civil Case No. 39576**

Report to the SRBA District Court

**Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
David R. Tuthill Jr., Adjudication Bureau Chief**

March 14, 2003

Exhibit 1

**SCANNED
MAR 24 2003**

INTRODUCTION

The Director of the Idaho Department of Water Resources ("IDWR" or "The Department") submits this recommendation for interim administration regarding sub-case No. 43-10356 in accordance with Order Setting Dates dated February 11, 2003, which requests that "IDWR shall prepare and file with the SRBA Court no later than Friday, March 14, 2003, a *Recommendation For Interim Administration* setting forth how it recommends claim 43-10356 be administered in accordance with the *Director's Reports for Irrigation and Other, "Reporting Area 7, IDWR Basin 43."* This report was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill, Jr., Adjudication Bureau Chief for IDWR.

PROCEDURAL BACKGROUND

Water Right Claim No. 43-10356 was reported in IDWR's September, 2001, *Director's Report for Irrigation and Other Water Rights, Reporting Area 7, IDWR Basin 43*. Water Right No. 43-10356 is owned by William D. Jones and Son ("Jones and Son"). Several objections were filed to this water right. The objections specifically stated that no such water right exists. On March 14, 2002, claimant Jones prepared responses to those objections. On December 5, 2002, a Joint Motion for Interim Administrative Order was filed by the objectors. A hearing on that Motion has been set for March 20, 2003.

DISCUSSION

The Director's Report recommended Water Right 43-10356 with a priority date of April 1, 1935, from the source Almo Creek, tributary to Raft River, with a quantity of 0.56 cfs. The place of use for the water right is limited to 28 total acres. 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

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right before Almo Creek allegedly joins Raft River. As Figure 2 depicts, Almo Creek is shown on the U.S. Geological Survey quadrangle map to be tributary to the Raft River in this area.¹

The Department included 43-10356 on its general provision for separate streams and listed this water right as being separate. That recommendation specifically states:

The following water rights from the following sources of water in Basin 43 shall be administered separately from all other water rights in Basin 43 in accordance with the prior appropriation doctrine as established by Idaho law.

The Joint Motion for Interim Administrative Order requests that water right No. 43-10356 be delivered as part of Water District 43B, the Raft River Water District.

Idaho Code § 42-1417(1)(a) says that the District Court may permit the distribution of water "in accordance with the Director's Report or as modified by the court's order." The Department's recommendation for the delivery of water right No. 43-10356 for the 2003 irrigation season is as follows.

In order to appropriately account for and limit the water right as it has been recommended in the SRBA and to avoid possible injury to senior Raft River water rights, water right No. 43-10356 should be administered pursuant to the current Director's Report. This means that 0.56 cfs of water may be diverted at the points of diversion described in Township 15 South, Range 25 East, Section 30 SESESE or in Section 32 NESENW and applied to 28 acres located in Township 15 South, Range 25 East, Section 32 SENE and SWNW. 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

¹ Figure 2 is a map prepared by IDWR using information from the U.S. Geological Survey. The letter attached to Figure 2 explains that Almo Creek is properly identified on Figure 2 by IDWR.

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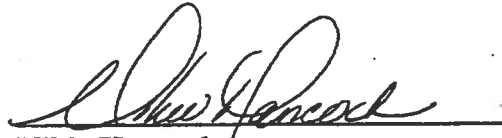
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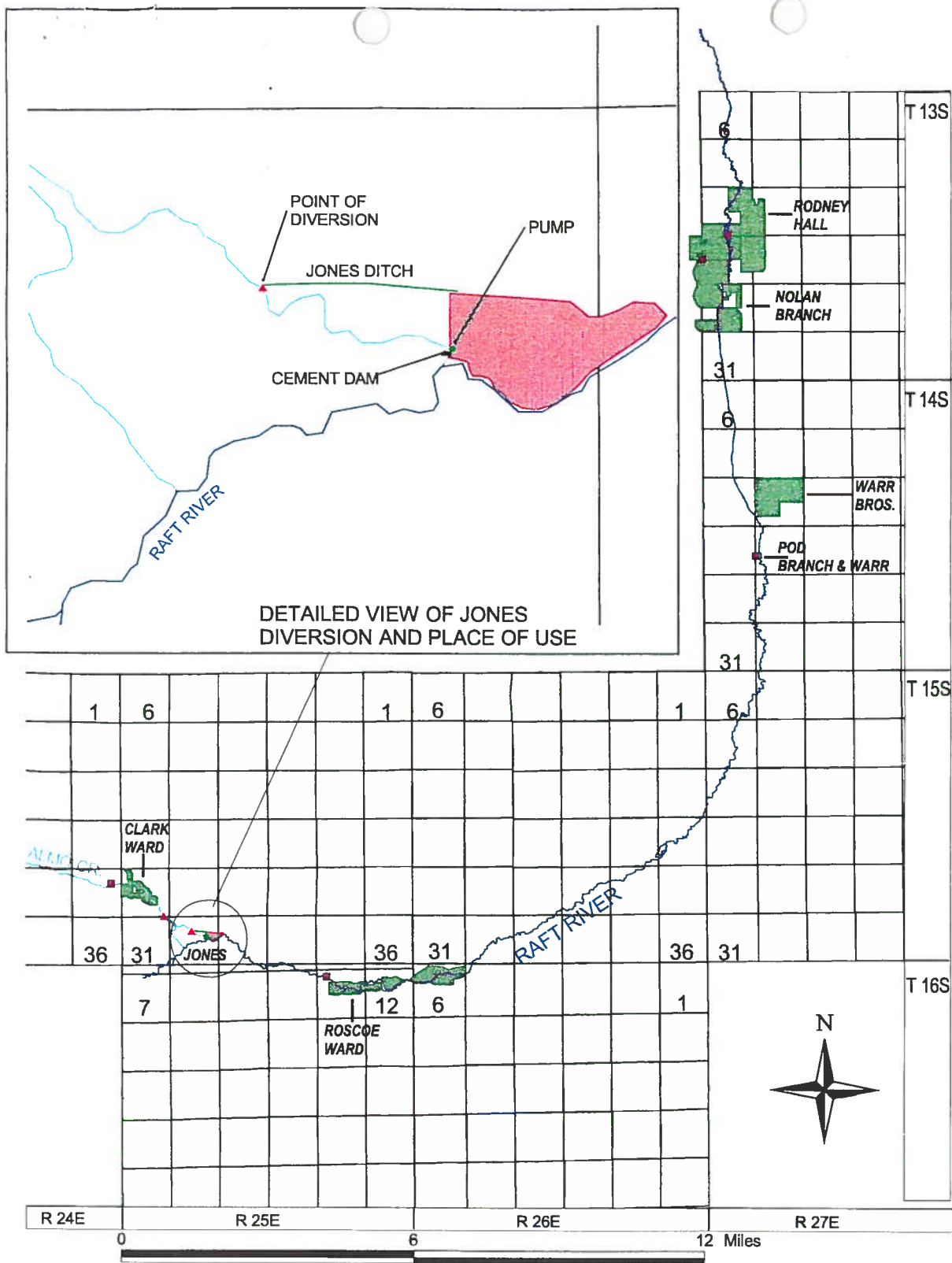
unnamed springs that are tributary to Raft River. Therefore, the Department recommends that the claimant allow water to pass through the existing concrete structure located in Section 32 NESWSE. The claimant may pump water further North of the concrete structure either directly from the ditch as depicted 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.

At this time, there is an active water district distributing water on Almo Creek, Water District 43D. A copy of the Order creating this water district is provided as Attachment 1. Water right No. 43-10356 is currently considered to be within the Almo Creek Water District. The Department sees no reason that this should be changed at this time. A trial in this matter is scheduled to begin May 29, 2003 and will address whether the water right exists at all and if so, whether it is properly included to be administered separately. If Jones and Son are limited to what was recommended in the Director's Report for water right No. 43-10356, 0.56 cfs to be delivered onto its property from Almo Creek, any other issues regarding whether the water right exists or whether it was properly included on the Separate Streams General Provision hinges on the Court's determination of its existence and its source. These fact specific, hotly disputed issues would be better addressed at trial.

In conclusion, the Department recommends that the water right be administered as part of the Almo Creek Water District, Water District No. 43D, and as a separate water right from Raft River limited by the elements as described in the current Director's Report.

Submitted this 14th day of March, 2003,


Vikie Hancock
Senior Water Resources Agent, IDWR



- OBJECTOR'S POINT OF DIVERSION
- PUMP
- ▲ JONES RECOMMENDED POINT OF DIVERSION
- OBJECTOR'S PLACE OF USE
- JONES PLACE OF USE

- ALMO CR
- JONES DITCH
- RAFT RIVER
- CEMENT STRUCTURE

FIGURE 1

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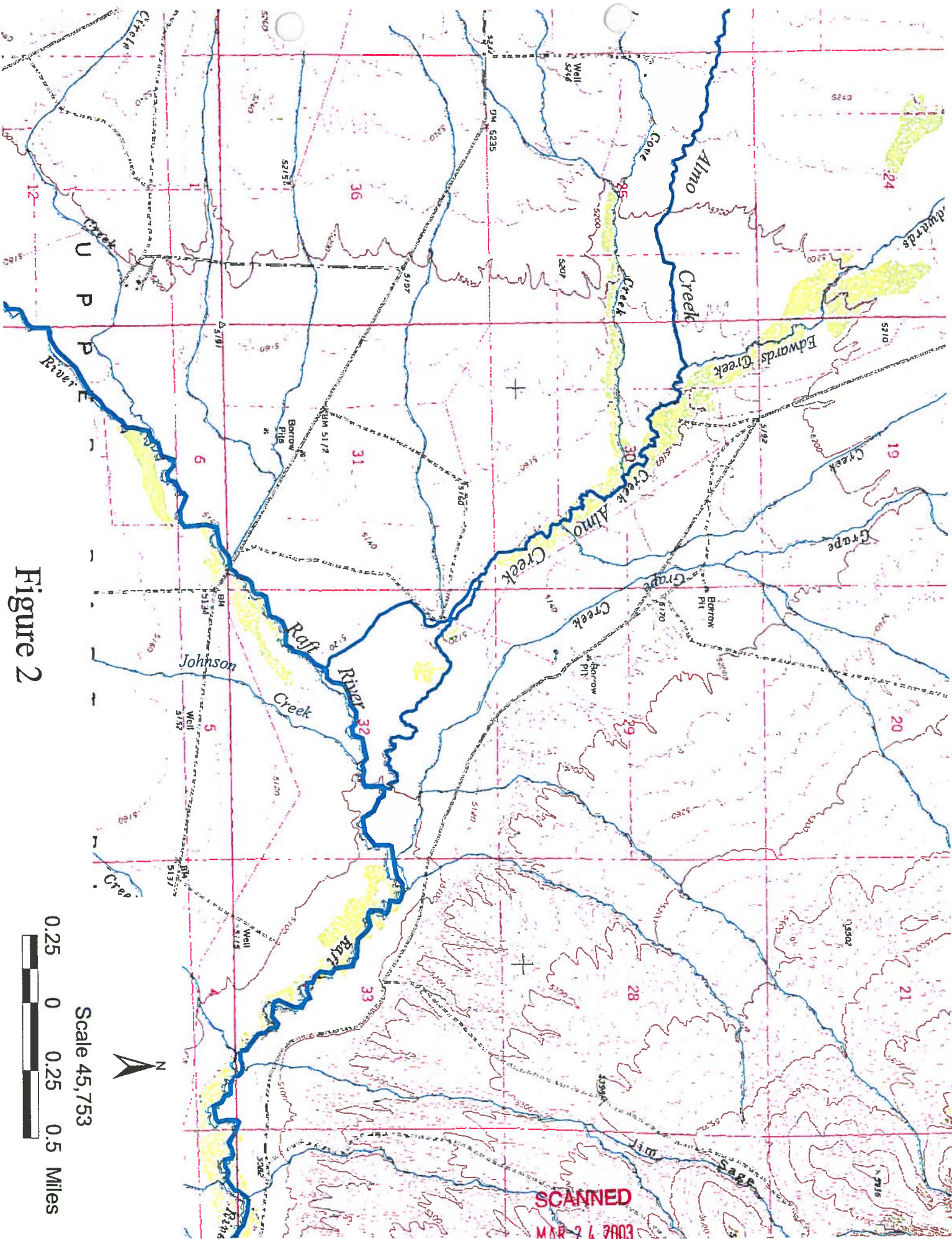


Figure 2



UNITED STATES BOARD ON GEOGRAPHIC NAMES

In reply please use this address:
U. S. Geological Survey
523 National Center
Reston, Virginia 20192-0523

RECEIVE

APR 02 2001

Department of Water Resources
Southern Region

March 13, 2001

Ms. Vikie Hancock
Senior Water Resources Agent
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Dear Ms. Hancock:

We are pleased to inform you that the U.S. Board on Geographic Names, at its February 8, 2001 meeting, approved the proposal to change the application of the names Almo Creek and Edwards Creek for streams in Cassia County. This decision was made in agreement with the recommendation of the Idaho Geographic Names Advisory Council. The changes have been entered into the Nation's official automated geographic names repository and will appear in Decision List 2001. The entries will read as follows.

Almo Creek: stream, 21 km (13 mi) long, in Sawtooth National Forest; heads in the Albion Mountains, at the S end of Almo Park at 42°08'49"N, 113°43'55"W, flows generally E and SE through the community of Almo, to join Raft River at the mouth of Johnson Creek; named for the nearby community of Almo; Cassia County, Idaho; Tps 15&14S, Rgs 25-23E, Boise Mer, 42°04'33"N, 113°33'16"W; USGS map - Jim Sage Canyon 1:24,000 (mouth of feature); Not: Edwards Creek - in part, South Almo Creek.

Edwards Creek: stream, 11.3 km (7 mi) long, in Sawtooth National Forest; heads 1.9 km (1.2 mi) S of Cache Peak at 42°10'29"N, 113°39'22"W, flows SSW for 1.6 km (1 mi) then SE for 9.7 km (6 mi) to enter Almo Creek (q.v.) 3.2 km (2 mi) ESE of the community of Almo; Cassia County, Idaho; Tps 15&14S, Rgs 25&24E, Boise Mer, 42°08'49"N, 113°43'55"W; USGS map - Jim Sage Canyon 1:24,000.

Sincerely yours,

Roger L. Payne
Executive Secretary

U.S. Board on Geographic Names

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MAR 24 2003



R. Keith Higginson
Director

Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Flood Plain Management
Irrigation and
Flood Control Districts

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
Statehouse — Annex 2
Boise, Idaho 83707
(208) 384-2215

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

Re-designation of water district)
boundaries and numbering system)

O R D E R

WHEREAS, Section 42-604, Idaho Code, provides that the Department of Water Administration shall divide the state into water districts and sets forth certain requirements therefore; and,

WHEREAS, many water districts have been formed pursuant to said section since 1903: and,

WHEREAS, the present designations of those water districts is not compatible with modern methods of record-keeping and needs to be modified to fit other record systems within the department.

NOW, THEREFORE, it is hereby ordered that the water districts lying within the state of Idaho be described as follows:

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Water District 01, Upper Snake River

Water District 01 is composed of Snake River and its tributaries from the point where the river enters the State of Idaho, downstream to Milner Dam which is located between Burley and Twin Falls, excluding Water Districts 25, Willow and Sand Creeks; 27, Blackfoot River; 29, Portneuf River; 41, Rock Creek; 43-A, Raft River; and 45-N, Dry Creek. It includes areas in Fremont, Madison, Teton, Jefferson, Bonneville, Bingham, Bannock, Power, Minidoka, Cassia, Jerome and Twin Falls counties.

Water District 11, Bear River

Water District 11 is composed of the entire Bear River drainage in Idaho, excluding those tributary streams which are set up as separate water districts. Those water districts which are excluded are as follows: 11-A, Eight Mile and Bailey Creeks; 11-B, Soda Creek; 11-E, Paris Creek; 11-F, Thomas Fork; 11-H, Montpelier Creek; 11-J, Bloomington Creek; 13-A, Cub River; 13-L, Battle Creek; 13-M, Cottonwood Creek; 13-N, Mink Creek; 13-P, North Fork Trout Creek; 13-Q, Middle Fork Trout Creek; 13-R, Oxford Creek; and 13-S, Whiskey Creek. Water District 11 is located in Bear Lake, Caribou, and Franklin counties.

Water District 11-A, Eight Mile and Bailey Creeks

Water District 11-A is composed of the entire Eight Mile and Bailey Creek drainages and is located in Caribou and Bear Lake counties.

Water District 11-B, Soda Creek

Water District 11-B is composed of the entire Soda Creek drainage and is located in Caribou county.

Water District 11-E, Paris Creek

Water District 11-E is composed of the entire Paris Creek drainage basin and is located in Bear Lake county.

Water District 11-F, Thomas Fork

Water District 11-F is composed of the entire Thomas Fork drainage and is located in Bear Lake county.

Water District 11-H, Montpelier Creek

Water District 11-H is composed of the entire Montpelier Creek drainage basin and is located in Bear Lake county.

Water District 11-J, Bloomington Creek

Water District 11-J is composed of the entire Bloomington Creek drainage and is located in Bear Lake county.

Water District 13-A, Cub River

Water District 13-A is composed of that portion of the Cub River drainage located in the State of Idaho and is situated in Franklin county.

Water District 13-L, Battle Creek

Water District 13-L is composed of the entire Battle Creek drainage basin and is located in Franklin county.

Water District 13-M, Cottonwood Creek

Water District 13-M is composed of the entire Cottonwood Creek drainage basin and is located in Franklin county.

Water District 13-N, Mink Creek

Water District 13-N is composed of the entire Mink Creek drainage basin and is located in Franklin county.

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Water District 13-P, North Fork Trout Creek

Water District 13-P is composed of the entire North Fork of Trout Creek drainage basin to its junction with Trout Creek and is located in Caribou county.

Water District 13-Q, Middle Fork Trout Creek

Water District 13-Q is composed of the entire Middle Fork of Trout Creek drainage basin to its junction with Trout Creek and is located in Caribou county.

Water District 13-R, Oxford Creek

Water District 13-R is composed of the entire Oxford Creek drainage basin and is located in Franklin county.

Water District 13-S, Whiskey Creek

Water District 13-S is composed of the entire Whiskey Creek drainage basin and is located in Caribou county.

Water District 25, Willow and Sand Creeks

Water District 25 includes the entire Willow and Sand Creek drainage basins to their junction with the Snake River and is located in Bingham, Bonneville, and Caribou counties.

Water District 27, Blackfoot River

Water District 27 includes the entire Blackfoot River drainage basin and is located in Bingham and Caribou counties.

Water District 29, Portneuf River

Water District 29 is composed of the entire Portneuf River drainage basin with the exception of Water Districts 29-C, Mink Creek; 29-F, Rapid Creek; 29-H, Marsh Creek, and 29-U, Bill Jackson Creek, and is located in Bannock and Caribou counties.

Water District 29-C, Mink Creek

Water District 29-C is composed of the entire Mink Creek drainage basin to its junction with the Portneuf River and is located in Bannock county.

Water District 29-F, Rapid Creek

Water District 29-F is composed of the entire Rapid Creek drainage basin to its junction with the Portneuf River and is located in Bannock county.

Water District 29-H, Marsh Creek

Water District 29-H is composed of the entire Marsh Creek drainage basin to its junction with the Portneuf River and is located in Bannock county.

Water District 29-U, Bill Jackson Creek

Water District 29-U is composed of the entire Bill Jackson Creek drainage basin to its junction with the Portneuf River and is located in Bannock county.

Water District 31, Mud Lake and its Tributaries

Water District 31 is composed of Mud Lake and the entire Camas Creek drainage basin and is located in Clark and Jefferson counties.

Water District 32-C, Medicine Lodge Creek

Water District 32-C is composed of the entire Medicine Lodge Creek drainage basin and is located in Clark county.

Water District 32-D, Birch Creek

Water District 32-D is composed of the entire Birch Creek drainage basin and is located in Clark and Butte counties.

Water District 33, Little Lost River

Water District 33 is composed of the entire Little Lost River drainage basin and is located in Butte and Custer counties.

Water District 34, Big Lost River

Water District 34 is composed of the entire Big Lost River drainage basin and is located in Butte and Custer counties.

Water District 36-A, Billingsley Creek

Water District 36-A is composed of the entire Billingsley Creek drainage basin and is located in Gooding county.

Water District 37, Big Wood River

Water District 37 is composed of the entire Big Wood River drainage basin excluding Water Districts 37-M, Little Wood River and its tributaries 37-A, Corral Creek; and 37-C, Soldier Creek, and is located in Blaine, Lincoln, and Gooding counties.

Water District 37-A, Corral Creek

Water District 37-A is composed of the entire Corral Creek drainage basin and is located in Camas county.

Water District 37-C, Soldier Creek

Water District 37-C is composed of the entire Soldier Creek drainage basin and is located in Camas county.

Water District 37-M, Little Wood River

Water District 37-M is composed of that portion of the Little Wood River drainage basin from the mouth of Silver Creek to the Big Wood River and includes the Silver Creek drainage basin. It is located in Blaine, Lincoln and Gooding counties.

Water District 37-N, Upper Little Wood River

Water District 37-N is composed of the Upper Little Wood River drainage basin down to the point where Silver Creek enters, with the exception of Water Districts 37-O, Muldoon Creek; and 37-U, Fish Creek, and is located in Blaine county.

Water District 37-O, Muldoon Creek

Water District 37-O is composed of the entire Muldoon Creek drainage basin to its junction with the Little Wood River and is located in Blaine county.

Water District 37-U, Fish Creek

Water District 37-U is composed of the entire Fish Creek drainage basin and is located in Blaine county.

Water District 41, Rock Creek

Water District 41 is composed of the entire Rock Creek drainage basin and is located in Power county.

Water District 43-A, Lower Raft River

Water District 43-A includes that portion of the Raft River drainage basin located north of the township line between Townships 12 and 13 south and is located in Cassia county.

Water District 43-B, Upper Raft River

Water District 43-B is composed of the Raft River and tributaries south of the township line between Townships 12 and 13 south, excluding Water Districts 43-C, Cassia Creek; and 43-D, Almo Creek, and is located in Cassia county.

Water District 43-C, Cassia Creek

Water District 43-C is composed of the entire Cassia Creek drainage basin and is located in Cassia county.

Water District 43-D, Almo Creek

Water District 43-D is composed of the entire Almo Creek drainage basin, with the exception of Grape Creek, Sythe Creek and Stine Creek, and is located in Cassia county.

Water District 45-A, Basin Creek

Water District 45-A is composed of the entire Basin Creek drainage basin and is located in Cassia county.

Water District 45-B, Birch Creek

Water District 45-B is composed of the entire Birch Creek drainage basin and is located in Cassia county.

Water District 45-C, Goose Creek

Water District 45-C is composed of the entire Goose Creek drainage basin and is located in Cassia county.

Water District 45-F, Marsh Creek

Water District 45-F is composed of the entire Marsh Creek drainage basin and is located in Cassia county.

* Water District 45-K, Cottonwood Creek

Water District 45-K is composed of the entire Cottonwood Creek drainage basin and is located in Cassia county.

Water District 45-N, Dry Creek

Water District 45-N is composed of the entire Dry Creek drainage basin and is located in Cassia and Twin Falls counties.

Water District 47-C, Cedar, Devil, House and Deadwood Creeks

Water District 47-C is composed of the Cedar Creek and Deadwood Creek drainage basins and is located in Twin Falls and Owyhee counties.

Water District 47-G, Salmon Falls Creek

Water District 47-G is composed of that portion of the Salmon Falls Creek drainage basin from the township line between Townships 10 and 11 south and the Snake River and is located in Twin Falls county.

Water District 51-A, Flat, Cherry, Deer and Three Creeks

Water District 51-A is composed of the Flat, Cherry, Deer and Three Creek drainage basins to their junction with the East Fork of the Bruneau River and is located in Owyhee county.

Water District 55-A, Jackson Creek

Water District 55-A is composed of the Jackson Creek drainage basin and is located in Owyhee county.

Water District 57-A, Upper Reynolds Creek

Water District 57-A is composed of that portion of Reynolds Creek drainage basin south of the township line between Townships 1 and 2 south and is located in Owyhee county.

Water District 45-J, Rock Creek & Tributaries

Water District 45-J is composed of the entire Rock Creek drainage basin which traverses basins 45 & 47 and is located in Twin Falls county.

Water District 57-J, Lower Reynolds Creek

Water District 57-J is composed of that portion of the Reynolds Creek drainage basin north of the township line between Townships 1 and 2 south and is located in Owyhee county.

Water District 57-B, Catherine Creek

Water District 57-B is composed of the entire Catherine Creek drainage basin to its junction with Castle Creek and is located in Owyhee county.

Water District 57-C, Castle Creek

Water District 57-C is composed of the entire Castle Creek drainage basin, with the exception of Water District 57-B, and is located in Owyhee county.

Water District 57-D, Sinker Creek

Water District 57-D is composed of the entire Sinker Creek drainage basin and is located in Owyhee county.

Water District 61-A, Canyon Creek

Water District 61-A is composed of the entire Canyon Creek drainage basin to its junction with Squaw Creek and is located in Elmore county.

Water District 61-C, Bennett Creek

Water District 61-C is composed of the entire Bennett Creek drainage basin and is located in Elmore county.

Water District 61-D, Little Canyon Creek

Water District 61-D is composed of the entire Little Canyon Creek drainage basin and is located in Elmore county.

Water District 61-E, Cold Springs Creek

Water District 61-E is composed of the entire Cold Springs Creek drainage basin and is located in Elmore county.

Water District 61-F, King Hill Creek

Water District 61-F is composed of the entire King Hill Creek drainage basin and is located in Elmore county.

Water District 63, Boise River

Water District 63 is composed of the entire Boise River drainage basin excluding Water Districts 63-B, Smith Creek, 63-P, Poor Boy Ditch, and 63-T, Warm Springs Creek. Water District 63 is located in Ada, Canyon, Elmore, Boise and Camas counties.

Water District 63-B, Smith Creek

Water District 63-B is composed of the entire Smith Creek drainage basin and is located in Elmore county.

Water District 63-P, Poor Boy Ditch

Water District 63-P is composed of the Poor Boy Ditch which has its heading near the midway point of the south boundary of the NE1/4, Sec. 14; Twp. 4N, Rge. 4W, B.M., and diverts water from the south drain of Drainage District No. 6 and is located in Canyon county.

Water District 63-T, Warm Springs Creek

Water District 63-T is composed of the entire Warm Springs Creek drainage basin and is located in Canyon county.

Water District 65-A, Squaw Creek

Water District 65-A is composed of the entire Squaw Creek drainage basin and is located in Gem, Valley, and Boise counties.

Water District 65-D, Boulder Creek

Water District 65-D is composed of the entire Boulder Creek drainage basin and is located in Valley county.

Water District 65-K, Lake Fork Creek

Water District 65-K is composed of the entire Lake Fork drainage basin and is located in Valley county.

Water District 65-L, Warm Springs & Scriber Creeks

Water District 65-L is composed of the Warm Springs Creek and Scriber Creek drainage basins and is located in Boise county.

Water District 67, Weiser River

Water District 67 is composed of the entire Weiser River drainage basin, with the exception of Water District 67-A, which is composed of the Little Weiser River drainage. The Weiser River is located in Adams and Washington counties.

Water District 67-A, Little Weiser River

Water District 67-A is composed of the entire Little Weiser River drainage basin to its junction with the Weiser River and is located in Adams and Washington counties.

Water District 72-B, Garden Creek

Water District 72-B is composed of the entire Garden Creek drainage basin and is located in Custer county.

Water District 72-C, Challis Creek

Water District 72-C is composed of the entire Challis Creek drainage basin and is located in Custer county.

Water District 72-F, Morgan Creek

Water District 72-F is composed of the entire Morgan Creek drainage basin to its junction with the Salmon River and is located in Custer county.

Water District 73, Pahsimeroi River

Water District 73 is composed of the entire Pahsimeroi River drainage basin and is located in Custer and Lemhi counties.

Water District 74-A, Geertsens Creek

Water District 74-A is composed of the entire Geertsens Creek drainage basin to its junction with the Lemhi River and is located in Lemhi county.

Water District 74-B, Kirtley Creek

Water District 74-B is composed of the entire Kirtley Creek drainage basin to its junction with the Lemhi River and is located in Lemhi county.

Water District 74-C, Bohannon Creek

Water District 74-C is composed of the entire Bohannon Creek drainage basin to its junction with the Lemhi River and is located in Lemhi county.

Water District 74-F, Pratt Creek

Water District 74-F is composed of the entire Pratt Creek drainage basin to its junction with the Lemhi River and is located in Lemhi county.

Water District 74-G, Sandy Creek

Water District 74-G is composed of the entire Sandy Creek drainage basin to its junction with the Lemhi River and is located in Lemhi County.

Water District 74-J, Withington Creek

Water District 74-J is composed of the entire Withington Creek drainage basin to its junction with the Lemhi River and is located in Lemhi county.

Water District 74-K, Pattee Creek

Water District 74-K is composed of the entire Pattee Creek drainage basin to its junction with the Lemhi River and is located in Lemhi county.

Water District 74-M, Agency Creek

Water District 74-M is composed of the entire Agency Creek drainage basin to its junction with the Lemhi River and is located in Lemhi county.

Water District 74-Q, Mill Creek

Water District 74-Q is composed of the entire Mill Creek, Peterson Creek and Alder Creek drainage basins to their junction with the Lemhi River and is located in Lemhi county.

Water District 74-U, Andrews and Slough Ditch

Water District 74-U is composed of all the lands irrigated by the Andrews and Slough Ditch system and is located in Lemhi county.

Water District 74-W, Texas, Hawley, Timber, Junction, Bull, Jake and Canyon Creeks.

Water District 74-W is composed of the entire drainage basins of Texas, Hawley, Timber, Junction, Bull, Jake, Canyon and Eighteen Mile Creeks and is located in Lemhi county.

Water District 74-Z, Big Eight Mile and Lee Creeks

Water District 74-Z is composed of the entire Big Eight Mile and Lee Creek drainage basins to their junction with the Lemhi River and is located in Lemhi county.

Water District 75-A, Jesse Creek

Water District 75-A is composed of the entire Jesse Creek drainage basin and is located in Lemhi county.

Water District 75-B, Williams Creek

Water District 75-B is composed of the entire Williams Creek drainage basin and is located in Lemhi county.

Water District 75-C, Runsten-Minzer Ditch

Water District 75-C is composed of all the lands irrigated by the Runsten-Minzer Ditch system and is located in Lemhi county.

Water District 75-D, Carmen Creek

Water District 75-D is composed of the entire Carmen Creek drainage basin and is located in Lemhi county.

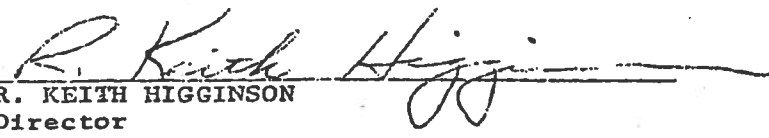
Water District 78-A, Big Creek

Water District 78-A is composed of the entire Goose Creek drainage basin and is located in Adams county.

Water District 78-C, Goose Creek

Water District 78-C is composed of the entire Goose Creek drainage basin and is located in Adams county.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Water Administration of the state of Idaho to be hereunto affixed at Boise, Idaho, this 27 day of January, 1971.


R. KEITH HIGGINSON
Director

CERTIFICATE OF SERVICE

I certify that on March 14, 2003, I caused to be served true and correct copies of the Recommendation of IDWR Regarding Interim Administration for Subcase No. 43-10356, to the following persons, in the manner indicated and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

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A.E. and Michael Nicholson
805 3rd Street
Rupert, ID 83350

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile



Signature of person or attorney mailing the form

SCANNED

MAR 24 2003



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

RECEIVED
FEB 24 2003
Department of Water Resources
Southern Region

February 20, 2003

Roscoe 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.

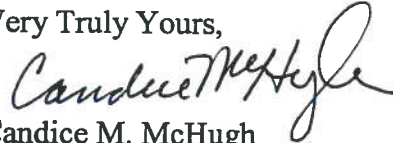
Although the Department's report detailing its recommendation for interim administration is not completed yet because it is not due until March 14, 2003, that report will generally provide information about whether interim administration of the Jones' water right is appropriate and possible, what that 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,



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

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
SUBCASE No. 43-10356

) AFFIDAVIT OF DAVE SUNDBERG
)

Having first been duly sworn, the affiant states the following.

1. My name is Dave Sundberg
2. The Objectors in this case asked me to look at the diversion where Joneses are pumping water at the confluence of Almo Creek and Raft River.
3. On about August, 13, 2002, I looked at some photographs which Roscoe Ward had taken on August 12. I then took Roscoe's camera and went and looked and took some pictures of the diversion practices.
4. Some of the pictures which accompany this affidavit were taken by Roscoe and Joyce Ward and some of them were taken by me. They accurately represent what I saw.
5. I have labeled the points from which the Photographs were taken on an aerial photo which Roscoe provided for this purpose. The photographs are also labeled with the same numbers.
6. Number 1 was taken from the earthen dam from which Joneses attempt to run water towards their property.
7. #2 shows where the natural channel of Almo Creek runs together with the channel of the

stream which is being diverted by the earthen dam. This is about 250 yards Southeast of #1.

8. #3 shows the concrete structure and pond at the pump site where the water was diverted into Jones'es sprinkler system. In August there was no water being diverted by the pump. It was merely being impounded so that it filled the channel towards the earthen dam and also the channel of Almo Creek, as shown in #2.

9. The next photo was taken from Point #1, the earthen dam looking Eastward.

10. The next photo was taken from Point #5, near Jones'es fence, looking towards the Earthen Dam, showing that some water was reaching Jones'es fence. This water ran down the ditch part way to the pump site, to about Point #4, but all sank before it reached the pump site.

11. The next photo shows the pond created by the earthen dam, about 100 yards West of the Dam at point #6.

12. The next photo shows the pond about 220 yards West of the Earthen Dam . This Photo was taken from Point #7.

13. The next photo shows the pond about 3/16ths of a mile West of the Earthen Dam at Point #8, showing the Western end of the pond. Where the pond appears to turn toward the South is very near the measuring device at Point #9. Water springs up in potholes in the area near the measuring device slightly to the Northwest. There is another large spring about 1/2 mile North at the foot of Jim Sage Mountain and somewhat wet areas in between, which are possibly seepage from the mountain.

14. The next group of photographs show the area in the Recommended Place of Use which Joneses claim they have ceased to irrigate along the South of the Place of Use. They are now

irrigating new ground on the North side of the Place of Use, up to the line which I have labeled "Fence" on the Aerial Photo. This group of photographs was taken from Point #4 on the West fence looking Southeastward across the field. The area which they claim they have ceased to irrigate is covered with tall rye grass and big sagebrush.

15. On October 17, 2002, I again went and looked at the same places, using a videocamera. I started at Point #1 at 4:34 p.m. and showed the water which is leaking through the Earthen Dam, then proceeded to Point #2 at 4:38 and showed the water which is coming into the stream from Almo Creek. In October the boards had been removed from the dam by the pump so the water which is in the channel can be seen. At 4:42 I showed the water which is running into Raft River at Point #3. This water could not be seen last Summer when the channel was dammed off and full of water and therefore was not reported by the Almo Creek Watermaster.

16. Still at Point #3, at 4:47 I turned around and tried to show that the measuring weir in the ditch by the pump has a hole washed under it so that the water which came down the ditch last Summer was probably not all measured.

17. Then at 4:49 p.m. I went up the ditch to the North of the pump to Point #4 and showed that the water was reaching about half way to the pump from where it crosses under the fence into the Jones property.

18. At 4:51 I then went to Point #5 and showed the stream just before it crosses into the Jones property, showing that there is a fair little stream which all sinks before it reaches Point #4.

19. I then went to Point #8 to show the extent of the impounded water. Considering the amount of water which sinks between Point #5 and Point #4 and that all of the area around the

pond appears to be the same type of soil, it looks quite obvious that a considerable amount of water is sinking because of this impoundment. This water would all go to Raft River if it were released.

20. As can be seen by the photographs of the earthen dam, there is no way to release the water except by removing the dam.

21. At 5:10 I went to Point #10 by the fence on the North side of the area which was irrigated by the Joneses with the pump and showed across the field to the ground which they claim they have ceased to irrigate, showing that the ground is covered with tall Rye grass and big sage brush.

22. I then went down to Roscoe Ward's diversion on Raft River and showed that some water was reaching. Although only a small amount was reaching, if the Earthen Dam were removed it would probably have been a sufficient amount to be usable. 2001 and 2002 are the only years that I have ever seen that Raft River did not reach Roscoe Ward.

23. The videotape shows fairly accurately what I observed the day that I made it.

DATED this 2ND day of ^{DECEMBER} ~~November~~, 2002.

DAVE SUNDBERG

SUBSCRIBED and SWORN to before me this ____ day of November, 2002.

NOTARY PUBLIC FOR IDAHO

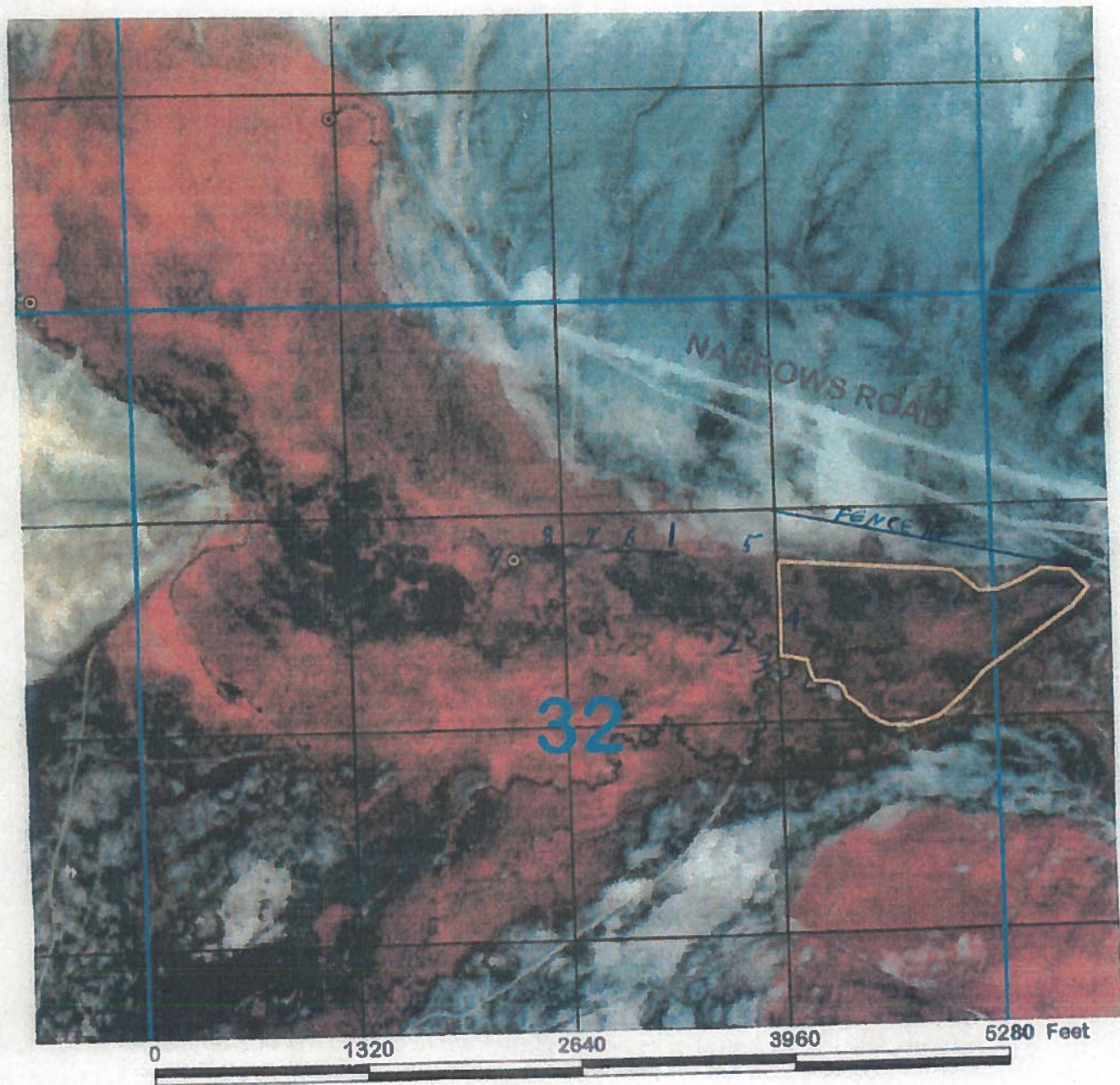
Residing at _____

My commission expires: _____

Idaho Department of Water Resources

RECOMMENDED PLACE OF USE
TWP 15S, RNG 25E
Data entry on June 25, 2001

RIGHTS: 43-10356



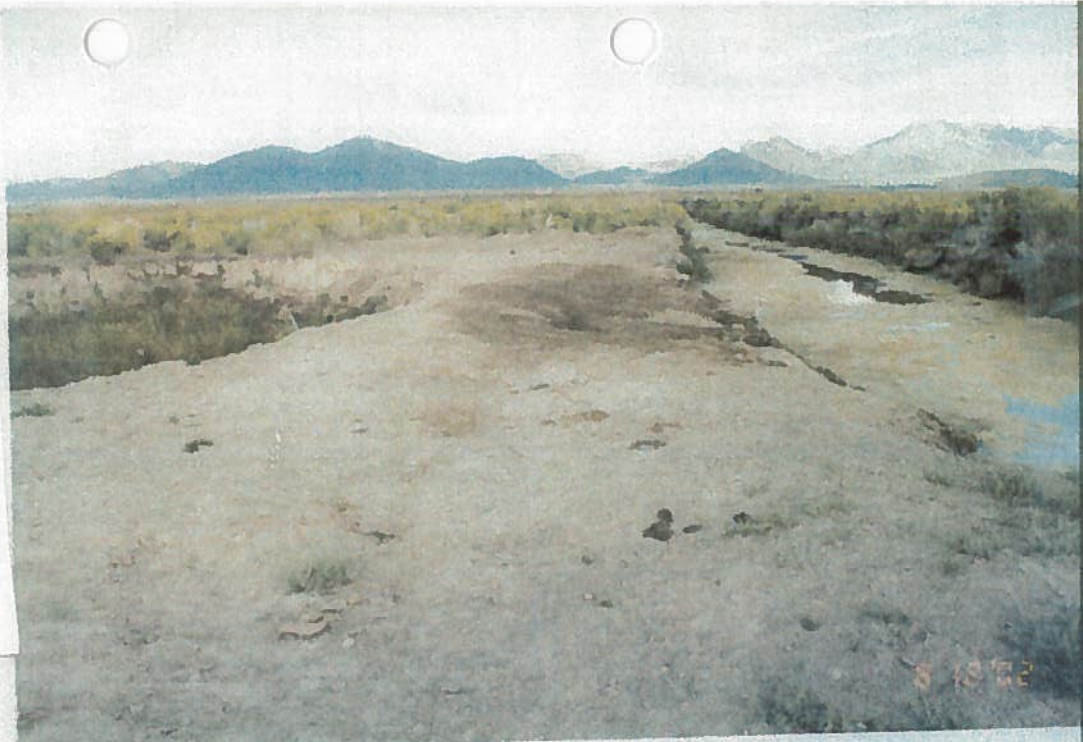
- ⊙ RECOMMENDED POINT OF DIVERSION
- RECOMMENDED PLACE OF USE
- SECTION LINES
- QUARTER/QUARTER LINES



GIS PLACE OF USE PRESENTATION
1987/1988 NAPP AERIAL PHOTOGRAPHY
PREPARED BY VIKIE HANCOCK

#2

POINT #1
EARTHEN DAM
LOOKING WEST



POINT #2
JUNCTION OF
ALMO CREEKBED
AND SPRING



POINT #3
CREEK BY
PUMP, JUNCTION OF
ALMO CREEK AND
RAFT RIVER



POINT #1
EARTHEN DAM
LOOKING ~~WEST~~
EAST



POINT #5
RIPPLE IN DITCH
WEST OF JONES



POINT #6
WEST OF
EARTHEN DAM



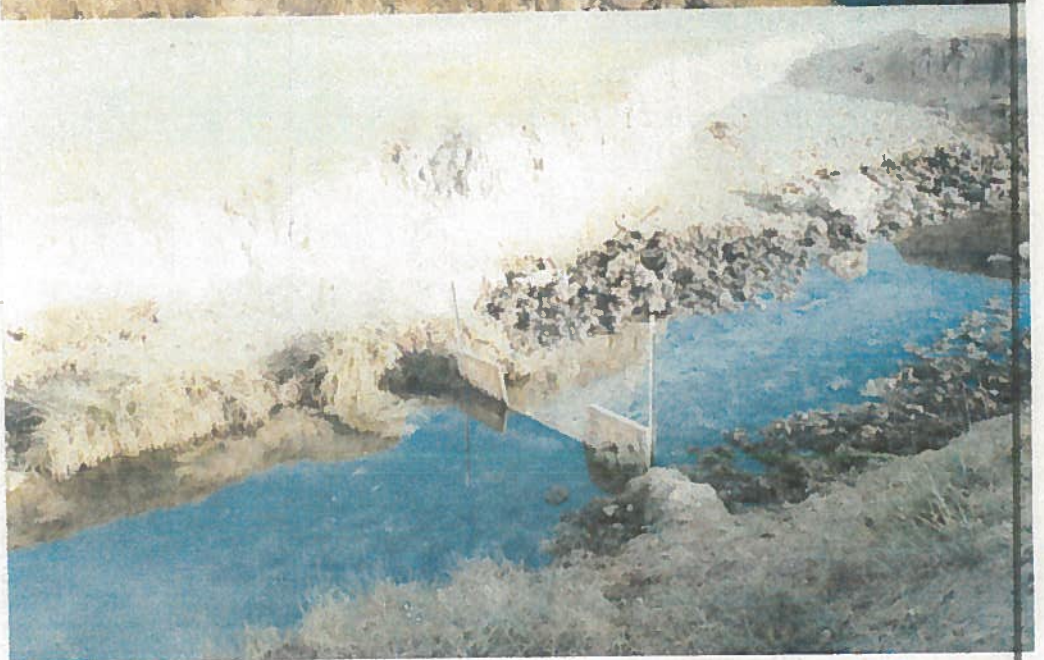
POINT #7
WEST OF
EARTHEN DAM



POINT #8
WEST OF
EARTHEN DAM



POINT #9
POINT OF
DIVERSION





LOOKING ACROSS THE FIELD FROM POINT #4



CERTIFICATE OF MAILING

I hereby certify that on the 4TH of December, 2002, I mailed copies of this JOINT MOTION FOR INTERIM ADMINISTRATIVE ORDER and it's accompanying MEMORANDUM 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

RECEIVED

DEC - 5 2002

Department of Water Resources

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



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

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 spreadshéet. (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	measurement diversion re-diversion	re-diversion	cfs consumption	milner's inches	allocation 43-10356	*+/-	birds	gpm ea	cfs	installed temp weir @ re-diversion
5/20/2002			0.56	22.50	0.56	-0.11	0	4.3	0.00	not pumping
5/21/2002			0.45	22.50	0.56	-0.11	36	4.3	0.34	
5/22/2002			0.56	22.50	0.56	-0.11	33	4.3	0.32	
5/23/2002			0.45	22.50	0.56	-0.11	30	4.3	0.29	
5/24/2002			0.56	22.50	0.56	-0.11	0	4.3	0.27	installed weir @ diversion
5/25/2002			0.45	22.50	0.56	-0.11	45	4.3	0.43	
5/26/2002			0.56	22.50	0.56	-0.11	0	4.3	0.00	not pumping
5/27/2002			0.45	22.50	0.56	-0.11	0	4.3	0.00	not pumping
5/28/2002			0.56	22.50	0.56	-0.11	43	4.3	0.41	
5/29/2002			0.45	22.50	0.56	-0.11	42	4.3	0.40	
5/30/2002			0.56	22.50	0.56	-0.11	38	4.3	0.36	
5/31/2002			0.45	22.50	0.56	-0.11	0	4.3	0.00	not pumping
6/1/2002			0.56	22.50	0.56	-0.11	34	4.3	0.32	
6/2/2002			0.45	22.50	0.56	-0.11	0	4.3	0.00	not pumping
6/3/2002			0.56	22.50	0.56	-0.11	0	4.3	0.00	not pumping
6/4/2002			0.45	22.50	0.56	-0.11	0	4.3	0.00	not pumping
6/5/2002			1.33	22.50	0.56	-0.11	0	4.3	0.26	
6/6/2002			0.59	29.30	0.56	0.03	0	4.3	0.15	
6/7/2002			0.52	26.00	0.56	-0.04	0	4.3	0.14	
6/8/2002			0.52	26.00	0.56	-0.04	0	4.3	0.13	
6/9/2002			0.47	0.00	0.56	-0.56	0	4.3	0.12	
6/10/2002			0.42	21.00	0.56	-0.14	0	4.3	0.09	
6/11/2002			0.12	17.20	0.56	-0.22	36	4.3	0.08	
6/12/2002			0.27	15.77	0.56	-0.24	33	4.3	0.08	
6/13/2002			0.32	14.33	0.56	-0.27	30	4.3	0.10	
6/14/2002			0.32	13.38	0.56	-0.29	28	4.3	0.08	
6/15/2002			0.27	13.38	0.56	-0.29	28	4.3	0.08	
6/16/2002			0.22	22.46	0.56	-0.56	0	4.3	0.08	
6/17/2002			0.22	0.00	0.56	-0.11	47	4.3	0.08	
6/18/2002			0.17	0.00	0.56	-0.56	0	4.3	0.08	
6/19/2002			0.22	21.50	0.56	-0.13	45	4.3	0.08	
6/20/2002			0.17	0.00	0.56	-0.56	0	4.3	0.08	
6/21/2002			0.08	21.50	0.56	-0.13	45	4.3	0.08	
6/22/2002			0.22	0.00	0.56	-0.56	0	4.3	0.08	
6/23/2002			0.08	0.00	0.56	-0.56	0	4.3	0.08	
6/24/2002			0.17	20.54	0.56	-0.15	43	4.3	0.07	
6/25/2002			0.10	20.07	0.56	-0.16	42	4.3	0.06	
6/26/2002			0.10	18.16	0.56	-0.20	38	4.3	0.06	
6/27/2002			0.10	0.00	0.56	-0.56	0	4.3	0.06	
6/28/2002			0.10	16.24	0.56	-0.24	34	4.3	0.06	
6/29/2002			0.06	0.00	0.56	-0.56	0	4.3	0.05	
6/30/2002			0.05	0.00	0.56	-0.56	0	4.3	0.05	
7/1/2002			0.05	0.00	0.56	-0.56	0	4.3	0.05	
7/2/2002			0.05	0.00	0.56	-0.56	0	4.3	0.05	
7/3/2002			0.05	0.00	0.56	-0.56	0	4.3	0.05	
7/4/2002			0.05	0.00	0.56	-0.56	0	4.3	0.05	
7/5/2002			0.05	0.00	0.56	-0.56	0	4.3	0.05	
7/6/2002			0.05	15.77	0.56	-0.24	33	4.3	0.05	
			0.03	0.32						

16.95	14.30	715.09	26.88	-12.58
26.88				

July 22, 2002

Dave Sundberg
Watermaster
Water District 43
Box # 1
Malta, Idaho 83342

Dear Mr. Sundberg:

The state office of the Idaho Department of Water Resources (Department) recently received a copy of a letter you sent to Allen Merritt regarding the distribution of water from Almo Creek.

In your letter you accuse Mr. Roger Ling of misrepresenting the law and its application to the facts involving the Jones' diversion from Almo Creek. Later in the letter, you surmised that Mr. Ling's role, as legal counsel, was to misrepresent the law so his clients can divert water and defy their neighbors. As you know, Mr. Ling responded to the Department, seeking an immediate apology for these accusations. In a follow-up telephone conversation, Mr. Ling assured John Homan, a deputy attorney general representing the Department, that he does not intend to pursue legal action at this time. Even so, the Department cannot simply dismiss Mr. Ling's concerns without providing some guidance concerning your responsibilities as a watermaster.

Mr. Sundberg, although watermasters may harbor strong opinions about different water users and their attorneys, you must not use your position to communicate those opinions in an unacceptable and unprofessional manner. A watermaster is a representative of state government with the specific responsibilities defined in Chapter 6, Title 42, Idaho Code. I appreciate the factual information in your letter intended to assure that the water right holders in your district are treated fairly. And I appreciate your providing your interpretation of how this information should be addressed within your understanding of the relevant law. I also understand that you did not use your watermaster title in the letter. Never-the-less, a watermaster, as with any state employee, must exercise discretion in communications with the public and the professional community if the communication can be construed as being done as a state employee. The watermaster must refrain from engaging in disparaging accusations about the

personal character of a water user's attorney because he disagrees with a legal position of that attorney. Disagreements over the facts and legal positions of the parties occur most everyday. Discussions to resolve those disagreements must be carried through in a professional and respectful manner if the parties are truly interested in making progress to solve a particular problem.

Your discussion of the facts in the letter was very candid and helpful. Being somewhat removed in Boise, I appreciate the complete and frank description of the events being experienced by the water users in the area. As a result of the letter, Allen Merritt will be meeting with you and others to review the concerns raised in your letter. Certainly, there is nothing wrong with an acknowledgement between the parties that a dispute exists and that the parties disagree on the available remedy under law. But, I trust in the future that you will exercise additional care when acting as a watermaster, or in a capacity that can be viewed as acting as a watermaster, to avoid unnecessary discussions about personal character issues of those involved.

Please call me at 327-7910 should you have any questions or would like to discuss the matter further.

Sincerely,

Norman C. Young
Administrator

Allen Merritt
Roger Ling Esq.

ROGER D. LING
BRENT T. ROBINSON

JASON D. WALKER
TIMOTHY J. SCHNEIDER
ASSOCIATES

LING & ROBINSON
ATTORNEYS AT LAW
615 "H" STREET
P. O. BOX 396
RUPERT, IDAHO 83350-0396

AREA CODE 208
TELEPHONE 436-4717
FAX 436-6804

July 16, 2002

RECEIVED
JUL 17 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, Idaho 83301-3380

Karl J. Dreher, Director
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Re: Communications from Dave Sundberg to Allen Merritt
- William D. Jones and Son Water Right

Dear Allen and Karl:

I recently received a copy of an undated letter purportedly written by Dave Sundberg, addressed to Allen Merritt of IDWR. As you know, Dave Sundberg is an employee of IDWR, acting as a watermaster in the Raft River area. The written letter above referred to contained inaccurate statements that are libelous to me and coming from an employee of the Idaho Department of Water Resources, become libelous statements by the Department. I will not tolerate such unethical and improper conduct by Dave Sundberg, and unless an apology is received immediately, I will proceed with legal action against Mr. Sundberg and the Department.

So that you fully understand my position, the libelous statements in the letter include the following: First, Mr. Sundberg states that "As could be expected" that I misrepresented "both the law and its application to Jones'es (sic) diversion." Clearly, this comment infers that I intentionally have misrepresented to the Department the wording of the statute and its application in this case. This statement is untrue, and Mr. Sundberg knows or should know that it was a false statement made to impugn my integrity and ability. It is doubtful that any statement by Mr. Sundberg, as an individual, would be given any consideration by any reasonable person, but with the title of "watermaster," he is clothed with the appearance of some knowledge.

Allen D. Merritt, P.E.
Karl J. Dreher, Director
Department of Water Resources
July 16, 2002
Page 2

Sundberg again in his summary alleges I that have misrepresented the facts or law to the Department, and states as a fact the Joneses have hired me as their attorney "to find laws and misrepresent them so that they can intentionally violate them." This statement is an accusation that I am a conspirator to violate the law, a libelous statement, per se.

The balance of the comments contained in the letter written by Mr. Sundberg are not worthy of discussion at this time. Needless to say, it is clear that Mr. Sundberg does not understand either the facts or the law involved in the administration of the water rights held by William D. Jones and Son. At the same time, it is absolutely inappropriate for an employee of the Department of Water Resources to assert opinions that have no basis in fact or law, in an effort to influence future decisions of the Department. There is no question in my mind that either of you have given the comments of Mr. Sundberg the slightest consideration as an accurate statement of facts or the law involved. Unfortunately, other persons dealing with the Department that read such a letter do not always understand that an employee of the Department, acting as a watermaster, does not necessarily have the mental capacity or legal expertise to accurately analyze and interpret the law or to accurately report the facts. For this reason, watermasters should not opine on issues that occur outside of their water district in an effort to influence other individuals or the Department. We should be able to expect that the watermasters employed in the State of Idaho are neutral in their review of water diversions, water rights and administration arising outside of their jurisdiction and for which they have limited knowledge. I would hope that you can impress upon Mr. Sundberg that the Department cannot tolerate prejudicial statements in matters that are outside of his expertise as a watermaster and his area of employment. The lack of veracity on the part of Mr. Sundberg will be established in an appropriate court of law and need not be discussed at this time.

Very truly yours,


Roger D. Ling

RDL:jb

pc: Dave Sundberg
William D. Jones

Dave Sundberg
Box #1
Malta, Idaho 83342

RECEIVED

JUL 15 2002

Department of Water Resources
Southern Region

Allen Merritt
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin falls, Idaho 83342-3380

Re: Letter to David Ogren dated May 31, 2002 concerning Jones diversion for water right # 43-10356

Dear Mr. Merritt:

As you probably know, last winter the Department requested that I look at Bill Jones'es diversion and comment on it as it relates to Raft River and the new point of diversion at which Joneses are pumping the water. Again this Summer some of the Raft River users have asked me to look at the new developments which have happened since then and your letter to Mr. Ogren with it's accompanying letter from Roger Ling. Since your letter was based on your interpretation of Ling's letter, I will address Ling's letter first.

As could be expected, Ling misrepresents both the law and it's application to Jones'es diversion. Idaho Code 42-105 says that a water user may put private water into a stream channel and then reclaim it provided that the water in the natural channel is not diminished and that proper measuring devices are installed and the diversion is controlled and reported by the watermaster. When I looked at the project about June 17 there was an earthen dam across the creek channel and a very tiny amount of water flowing eastward in the ditch over to Jones'es fence and thence southward to where their pump is located and right at the side of the pump it goes through a weir and back into the creek channel. The amount of water going through the weir was so tiny that it could not be measured. It was less than a quarter of an inch deep. This operation is certainly not what is described in 42-105.

There was much more water leaking through the dam at the old point of diversion than there was in the ditch. In fact there was so much water leaking through the dam that the back of the dam had holes washing out of it. There is also water coming into the creek from the West. None of this water is being measured. The fact is that Joneses are still running a twenty horse pump pumping unmeasured water from the illegal point of diversion. The tiny amount of water in the ditch has no relevance. If they were only pumping the water in the ditch they would never have to turn the pump on because there is more leaking through the dam at the pump site than there is in the ditch. If they ever turn the pump on it would certainly exceed the amount which is in the ditch,

which would not be in compliance with the provisions of the second paragraph of page 2 of your letter to Mr. Ogren. Therefore your Jan. 24, 2002 letter telling Joneses to cease the use of the pump should still be enforced.

The Photographs show #1. The dam at the pump site, #2. The ditch going away from the old point of diversion, #3. The ditch where it enters Jones'es property, and #4. The ditch at the old point of diversion, looking at it from the East. These photos were provided to Roscoe Ward by Roger Ling. As can be seen from the photos, the ditch is very deep and wide where it goes away from the creek and becomes quite small where it crosses into the Jones property. It is so flat that there is no ripple or hardly any sign of movement in the water. The bank is so low at the dam that if 1 cfs of water were to come down Almo creek and go out the ditch it would overflow and wash the dam out. In the meeting in Burley with Joneses and the Transfer protestants it was agreed by everybody that Almo Creek is in fact at times a tributary to Raft River

In your letter, second paragraph, you quote the Jobe Adams decree, which says in part, "that the users of water from Raft River and its tributaries have no interest whatever in the use of the waters of Almo Creek in accordance with the priorities hereafter decreed." I understand that the Almo Creek rights which were decreed in 1928 have absolute priority over Raft River regardless of their priority dates. Of course a water right which was denied by the court would not have priority over any decreed right.

I have attached a copy of a Note to file by Vickie Hancock dated 3/8/00 in which she explained to Joneses that both the Almo Creek decree and the Jobe Adams decree deny the existence of this water right. It is hard to believe that this recommended right should have priority over Raft River now, after being denied in the previous decrees. Assuming that the right exists, it is certainly junior to both the Almo Creek decreed rights and the Raft River decreed rights.

Idaho Code 42-604 says, in part, "any stream tributary to another stream may be constituted into a separate water district when the use of the water therefrom does not affect or conflict with the rights to the use of the water of the main stream; " The use of Jones's new right does not affect the Almo Creek decreed rights, but it certainly does affect the use of the Raft River rights. Right now, if Joneses removed their dam the water would go to Roscoe Ward's 1872 rights, which are receiving very little water. Earlier this spring it would have gone mostly to Nolan Branch's and Olene Warr's 1871 rights, which were never filed. According to 42-604, Jones's new right could be separated from District 43-D because it does not affect any right in 43-D. The ground being irrigated does not border on Almo Creek, but rather it lies along the banks of Raft River. The ground being irrigated can not all be irrigated from the old point of diversion, because even with the perfectly flat flowing ditch some of the ground is higher than the ditch and can only be irrigated by pumping the water uphill and was probably never irrigated before the pump was installed.

According to 42-604, this new right can not be separated from the Raft River Water District 43-B because it affects the prior rights on the main stream and the ground is physically on Raft River. Although Almo Creek was decreed to be a separate water district in the Jobe Adams decree, this claim, if it was claimed, was denied and was obviously not part of that water district and should not share in the absolute priority which was granted to the decreed rights on Almo Creek. I think that the new right which Joneses are claiming should only be used when the Raft River rights are all being filled.

The last sentence of the first paragraph of 42-604 indicates that baby water rights are not rigidly installed into any particular water district, and the first sentence of the second paragraph of 42-604 says that the director should change the boundaries of the water district if it provides better administration of the water rights. I think that if Joneses were to accept the junior nature of their right that most of the dispute would be over with. The biggest problem with this right is that Joneses are developing new ground claiming absolute priority over the decreed rights. I hardly think the wording in the Jobe Adams decree supports their claim.

A last point of contention which bothers the Raft River users is that Joneses have decreed rights to Raft River water and throughout most of the 1990s water was available for them to take and it would have benefitted the Raft River Valley's water supply if they had taken their water, but they refused to take it. I personally, and others from Raft River District, encouraged Joneses to take their water, but they let it run down the river to waste while they pumped their wells. Now, when the people with decreed rights need the water, Joneses hire Roger Ling to write falsehoods to deceive you while Joneses take this water and pump it into corners which have never been irrigated before and want absolute priority over everybody else, claiming that they somehow fit into the Almo Creek decree.

In summary,

1. In spite of Ling's misrepresentations, Joneses are still pumping unmeasured water from the illegal point of diversion, most of which either leaks through their dam at the recommended POD or comes into the stream below it. The tiny stream in the ditch is irrelevant. They are not in compliance with your instructions or state law.

2. The Jobe Adams decree sets the Almo Creek decreed rights off as a separate district with absolute priority over Raft River because the Almo Creek decree was already in force before the Raft River decree was made. However, both decrees deny the right which Joneses are claiming.

3. The ground which Joneses are irrigating is physically outside of the area described in the Almo Creek decree and borders on Raft River, not Almo Creek. The recommended POD is downstream from anything else in the Almo Creek decree and does not affect the Almo Creek users but it does affect the Raft River users so according to 42-604 if this right is recommended it should be in the Raft River district.

4. While Joneses refuse to take their decreed Raft River water, they and their lawyer are picking this fight over their presumed right to irrigate new ground with absolute priority over the people who have used the water consistently for over 130 years. It looks like Joneses have hired Ling to find laws and misrepresent them so that they can intentionally violate them while they defy their neighbors to do anything about it.

In my opinion, Joneses should either comply with the law or stop using the water altogether but, in any case, they should not participate in the priority which Almo Creek decreed rights have over Raft River and should be part of District 43B so they can be governed with the rights which their use affects.

Sincerely,


DAVE SUNDBERG

RECEIVED

JUN 11 2002

Department of Water Resources

2002 JUN 07 PM 03:31
DISTRICT COURT - SRBA
TWIN FALLS CO. IDAHO
FILED *DM*

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) NOTICE SETTING SUBCASE(S)
) FOR INITIAL HEARING
Case No. 39576)
) SUBCASE NO: 43-10356

The Initial Hearing for this subcase will be held before
Special Master TERRENCE A. DOLAN

WEDNESDAY, AUGUST 14, 2002 at 10:00 AM
CASSIA COUNTY COURTHOUSE
1459 OVERLAND AVE
BURLEY, ID

ATTENDANCE IS MANDATORY. All parties are required to
attend and must have full settlement authority.

At the Initial Hearing you will have an opportunity
to meet with a representative of the Idaho Department of
Water Resources (IDWR) and/or the objector in an attempt
to reconcile any difference between the claim and the
Director's Report. Bring any and all information you
believe is relevant to your claim and/or objection. If
the claim cannot be reconciled at the Initial Hearing,
the court will set the subcase(s) for trial within 45
days of the Initial Hearing. IF YOU INTEND TO AMEND YOUR
CLAIM, YOU MUST DO SO AT OR BEFORE THE INITIAL HEARING.

Settlement documents must be filed with the court by
AUGUST 07, 2002 or hearing will not be vacated.

Dated: JUNE 07, 2002

/S/ LETTIE MESSICK
Deputy Clerk
Snake River Basin Adjudication

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

Page 1 6/07/02

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the NOTICE SETTING SUBCASE(S) FOR INITIAL HEARING was mailed on JUNE 07, 2002, with sufficient first-class postage to the following:

WILLIAM D AND SON JONES
WILLIAM D JONES AND SON

Represented by:
ROGER D LING
PO BOX 396
RUPERT, ID 83350
Phone: 208-436-4717

WARR BROTHERS
C/O OLENE WARR
2231 S 2350 E
MALTA, ID 83342

CLARK W WARD
HC 61 BOX 1560
MALTA, ID 83342
Phone: 208-824-5560

ROSCOE WARD
PO BOX 108
ALMO, ID 83312
Phone: 208-824-5591

RODNEY HALL
PO BOX 631
MALTA, ID 83342
Phone: 208-645-2517

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

REID S. STUART
STUART RANCH
MALTA, ID 83342
Phone: 435-757-5933

NOLAN K BRANCH
1823 S 2330 E
MALTA, ID 83342
Phone: 208-420-0326

JUN 24 2007

2002 JUN 21 PM 03:36
DISTRICT COURT - SRBA
TWIN FALLS CO. IDAHO
FILED

In Re SRBA) NOTICE SETTING HEARING
)
Case No. 39576)
) SUBCASE NO: 43-10356

SRBA
DISTRICT COURT
253 3RD AVENUE NORTH
TWIN FALLS, ID

/S/ LETTIE MESSICK
Deputy Clerk
Snake River Basin Adjudication

Page 1 6/21/02

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the NOTICE SETTING HEARING was mailed on JUNE 21, 2002, with sufficient first-class postage to the following:

WILLIAM D AND SON JONES
WILLIAM D JONES AND SON

Represented by:
ROGER D LING
PO BOX 396
RUPERT, ID 83350
Phone: 208-436-4717

WARR BROTHERS
C/O OLENE WARR
2231 S 2350 E
MALTA, ID 83342

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Phone: 208-824-5591

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PO BOX 631
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Phone: 208-645-2517

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

REID S. STUART
STUART RANCH
MALTA, ID 83342
Phone: 435-757-5933

NOLAN K BRANCH
1823 S 2330 E
MALTA, ID 83342
Phone: 208-420-0326

RECEIVED

JUN - 4 2002

Department of Water Resources

Roger D. Ling, Esq.
LING & ROBINSON
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 1018

Attorneys for Claimant,
William D. Jones and Son

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

Subcase No. 43-10356

Case No. 39576,

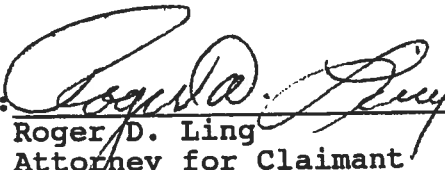
NOTICE OF SERVICE OF DISCOVERY

COMES NOW the Claimant, William D. Jones and Son, by and through its attorney of record, Roger D. Ling of the firm Ling & Robinson, and pursuant to the Idaho Rules of Civil Procedure, hereby notifies the Court and all parties that on the date below stated the original RESPONSES TO ROSCOE WARD'S FIRST SET OF REQUESTS FOR ADMISSIONS was forwarded to Roscoe Ward, pro se.

DATED this 3rd day of June, 2002.

LING & ROBINSON

By:


Roger D. Ling
Attorney for Claimant

NOTICE OF SERVICE OF DISCOVERY

- 1 -

LING & ROBINSON

ATTORNEYS AT LAW

RUPERT, IDAHO 83350-0396

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of June, 2002, I served the of the foregoing *Notice of Service of Discovery* upon:

Roscoe Ward
P. O. Box 108
Almo, Idaho 83312

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

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

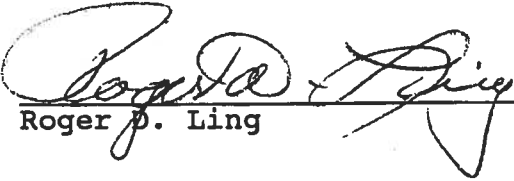
Rodney Hall
P. O. box 631
Malta, Idaho 83342

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

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

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


Roger P. Ling

1
2
3 Roger D. Ling, Esq.
LING & ROBINSON
4 P. O. Box 396
Rupert, Idaho 83350
5 Telephone (208) 436-4717
Facsimile (208) 436-6804
6 ISB No. 1018

7 Attorneys for Claimant,
William D. Jones and Son
8

9
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,)

)
14) **RESPONSES TO ROSCOE WARD'S**
FIRST REQUESTS FOR ADMISSIONS
)

15 COMES NOW the Claimant, William D. Jones and Son, by and
16 through its attorney of record, Roger D. Ling of the firm Ling &
17 Robinson, and pursuant to Rule 33 of the Idaho Rules of Civil
18 Procedure, responds to Roscoe Ward's First Requests for Admissions
19 served upon claimant by Roscoe Ward, as follows:

20 **REQUEST FOR ADMISSION NO. 1:** Admit that Almo Creek at
21 times is a Tributary to Raft River.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:** Admit.

23 **REQUEST FOR ADMISSION NO. 2:** Admit that Almo Creek and
24 its Tributaries have a separate Water District according to the
25 decree of the State Court.
26

27 **RESPONSES TO ROSCOE WARD'S**
28 **FIRST REQUESTS FOR ADMISSIONS**

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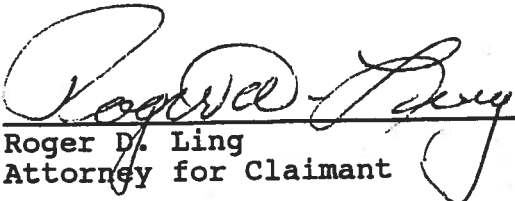
RESPONSE TO REQUEST FOR ADMISSION NO. 2: It is admitted that Almo Creek and its tributaries constitute a water district under the provisions of §42-604, Idaho Code, that provides that any stream tributary to another stream may be constituted into a separate water district when the use of the water therefrom does not affect or conflict with the rights to the use of the water of the main stream.

REQUEST FOR ADMISSION NO. 3: Admit that the William D. Jones and Son property involved in Subcase No. 43-10356 is not part of the Almo Creek decree and Water District.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Objection. It is impossible to respond to this Request for Admission as it is impossible to determine what is meant by "property" involved in Subcase No. 43-10356 or what is meant by "property" that is not part of the Almo Creek decree and Water District. It is admitted that Water Right No. 43-10356, authorizing a diversion of water from Almo Creek, is not a decreed right. It is denied that such diversion is not within Water District 43D which includes all of Almo Creek and its tributaries.

DATED this 3rd day of June, 2002.

LING & ROBINSON

By: 

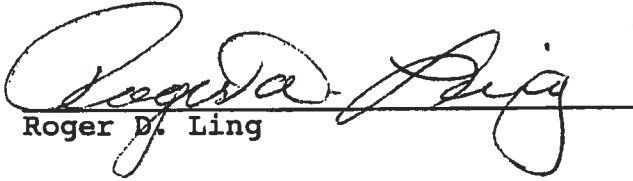
Roger D. Ling
Attorney for Claimant

STATE OF IDAHO)

County of Minidoka)

Roger D. Ling, being first duly sworn, deposes and says:

That he is one of the attorneys for the claimant in the above entitled action, that he has read the above and foregoing RESPONSES TO ROSCOE WARD'S FIRST REQUESTS FOR ADMISSIONS, knows the contents thereof, and the facts stated he believes to be true.


Roger D. Ling

SUBSCRIBED AND SWORN to before me this 3rd day of June, 2002.

(SEAL)

JUDY BARNES
NOTARY PUBLIC
STATE OF IDAHO


Notary Public for Idaho
Residing at: Rupert, Idaho
My Commission expires: 02/12/2005

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of June, 2002, I served the of the foregoing Responses to Roscoe Ward's First Requests for Admissions upon:

ORIGINAL: Roscoe Ward
P. O. Box 108
Almo, Idaho 83312

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

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

RESPONSES TO ROSCOE WARD'S
FIRST REQUESTS FOR ADMISSIONS

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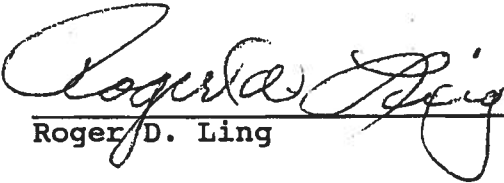
Rodney Hall
P. O. box 631
Malta, Idaho 83342

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

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

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


Roger D. Ling

ROGER D. LING
BRENT T. ROBINSON

JASON D. WALKER
TIMOTHY J. SCHNEIDER
ASSOCIATES

LING & ROBINSON
ATTORNEYS AT LAW
615 'H' STREET
P. O. BOX 396
RUPERT, IDAHO 83350-0396

AREA CODE 208
TELEPHONE 436-4717
FAX 436-6804

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.

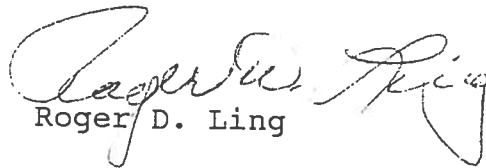
Since these events, I have been retained by William D. Jones and Rod Jones to review this water right and operation. From my investigation, it appears clear that water under Water Right No. 43-10356 is being diverted at the point of diversion identified in the Director's Recommendation for this water 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

COMMUNICATION DOCUMENTATION

From: Vikie Hancock

May 15, 2002

Regarding:

Customer:

43-2538 & 43-2479

Bill and Rodney Jones

The Jones came in to discuss the combined acre limits on the above two rights for groundwater. 43-2538 was licensed for 140 acres and 43-2479 was licensed for 154 acres, and they wanted to know why the two were limited to the irrigation of 245 acres, not 294 acres. I explained that at the time of licensing, the places of use were overlapping. In the course of the conversation I ran across a map in the file that I had created for my own use which showed the original overlapping licensed acres superimposed on it. I made a color copy of this map and gave it to them. I also provided them with a color copy of my recommended place of use, as they did not have one with them. They are apparently considering putting in a pivot using the groundwater from these two rights and had an appointment to speak to Allen Merritt.

We also discussed the objection to their claim on **Almo Creek - 43-10356**. They wanted to know if I had a map that showed the Raft River diversion points of Reid Stewart, Nolan Branch (C-Bar Cattle) and Warr Brothers, all of whom had objected to 43-10356. I said I did not have anything that would encompass that entire area, but helped the Jones find the PODs of all but the Warr's on the Oakley 1:100,000 map and made them a B&W and color copy of it for their use.

Rodney also asked me again how I came up with the priority date for their right as 1935 and for Clark Ward's right as 1928, as Clark Ward said I had relied on affidavits for his right also. I told them that from what I could tell there was a difference in the history of the two rights. I said that the decisions on priority dates for both his and Ward's right were made independent of other rights on the creek and based upon information I gained about each of the rights.

RECEIVED

MAY 10 2002

Department of Water Resources

Roger D. Ling, Esq.
LING & ROBINSON
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 1018

Attorneys for Claimant,
William D. Jones and Son

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

Subcase No. 43-10356

Case No. 39576,

NOTE OF ISSUE

TO: THE CLERK OF THE SRBA COURT AND SPECIAL MASTER DOLAN

YOU ARE HEREBY NOTIFIED that the above-entitled subcase is at issue to all parties filing Objections or Responses herein, and the time for filing additional Objections or Responses has expired.

1. The nature of this subcase is a denial that the recommended water right for the claimant William D. Jones and Son is a valid water right.

2. The time estimated for a pretrial conference is one-half hour, and it is requested that the pretrial conference be set at least two weeks prior to trial.

NOTE OF ISSUE

- 1 -

LING & ROBINSON

ATTORNEYS AT LAW

RUPERT, IDAHO 83350-0396

1
2
3 3. An Application with the Idaho Department of Water
4 Resources has been made for a change in the point of diversion for
5 this water right reported in the Director's Report, and Protests
6 have been filed to that Application for Transfer, raising the
7 identical issue raised in the Objections to the Recommendation of
8 the Director's Report. Although it does not appear that a Notice
9 of Administrative Proceeding has been submitted to the SRBA Court,
10 in the event such a Notice were to be filed, a stay of the SRBA
11 proceedings on this claim would be inappropriate and would not
12 provide judicial economy required in this subcase.

13 4. The time estimated for trial is two (2) days, and
14 claimant requests a minimum notice of trial of thirty (30) days in
15 order to schedule witnesses.

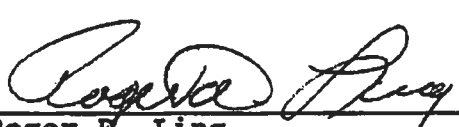
16 5. The name and address of counsel for the claimant is:

17 Roger D. Ling
18 Ling & Robinson
19 P. O. Box 396
20 Rupert, Idaho 83350-0396
21 Telephone (208) 436-4717

22 6. Each of the objectors are appearing pro se in these
23 proceedings.

24 DATED this 7th day of May, 2002.

25 LING & ROBINSON

26 By: 

27 Roger D. Ling
28 Attorneys for Claimant

1
2
3 CERTIFICATE OF MAILING

4 I hereby certify that on the 8th day of May, 2002, I
5 served a copy of the foregoing NOTE OF ISSUE upon:

6 Reid Stewart
7 Stewart Ranch
8 Malta, Idaho 83342

9 Roscoe Ward
10 P. O. Box 108
11 Almo, Idaho 83312

12 Nolan K. Branch
13 1823 South 2330 East
14 Malta, Idaho 83342

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

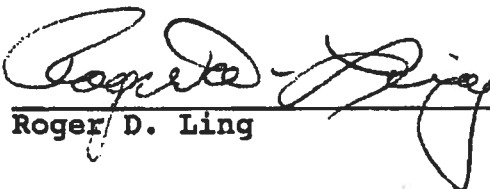
18 Rodney Hall
19 P. O. box 631
20 Malta, Idaho 83342

21 Warr Brothers
22 c/o Olene Warr
23 2231 South, 2350 East
24 Malta, Idaho 83342

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

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

by depositing a copy thereof in the United States mail, postage prepaid, in envelopes addressed to said persons/entities at the foregoing addresses.

25
26 
27 Roger D. Ling

28 NOTE OF ISSUE

ROGER D. LING
BRENT T. ROBINSON

JASON D. WALKER
TIMOTHY J. SCHNEIDER
ASSOCIATES

LING & ROBINSON
ATTORNEYS AT LAW
615 'H' STREET
P. O. BOX 396
RUPERT, IDAHO 83350-0396

AREA CODE 208
TELEPHONE 436-4717
FAX 436-6804

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.

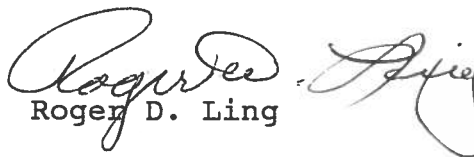
Since these events, I have been retained by William D. Jones and Rod Jones to review this water right and operation. From my investigation, it appears clear that water under Water Right No. 43-10356 is being diverted at the point of diversion identified in the Director's Recommendation for this water 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

MEMO

*RE: Protested Transfer.
of Point of Diversion*

FROM: Allen Merritt

DATE: April 30, 2002

TO: Transfer file T69665 of Right 43-10356 in the name of William D Jones and Son

SUBJECT: Pre-hearing conference

This day I conducted a pre-hearing conference on this protested matter. The applicant was present and represented by Roger Ling. Roscoe and Joyce Ward (Protestant) and Reid Stewart (Protestant) were present and represented themselves. Also present were several other parties interested in the matter at hand as shown on the sign up sheet.

Note that 43-10356 is currently before the SRBA court and has been objected to by both protestants as well as others.

Mr. Jones and Mr. Ling explained the purpose of the application whereby a pump has been placed on the creek recently to pump water to sprinkle water. They indicated that they pump water with a 20 HP pump sufficient for 2 lines with 4 gpm sprinklers which limits the use to 28 inches. They explained that the pump was put in since the old ditch washed out a few years ago. Water continues to be diverted into the ditch at the NESENW S32 where it runs east to where the wash out exists; it then flows back into Almo Creek; it then flows downstream in the creek to the pump. Mr. Ling questioned the need for the transfer since he portrayed the use as conveying water in a stream to the pump which they have a right to do under statute. Mr. Ling acknowledged that objections to the right have been made by the protestant and others and indicated that he would motion the court to proceed since the validity of the right should be determined by the court with all the objectors and pointed out the court may not be bound by any IDWR finding at this point.

The Wards explained that they have decreed rights on Raft River downstream from Almo Creek and feel the right is invalid &/or forfeited and use of the water injures them. They have reviewed WM records for Almo Creek and find no record.

Mr. Stewart had concerns about injury to his rights on Raft River.

We discussed the present discrepancy of how forfeiture is looked at between Appropriation staff and SRBA staff. We also discussed the wording in the Jobe Adams decree, which is also reflected in the Basin 43 General Provisions, that Almo Creek is administered separate from Raft River.

There was a lively discussion with parties and others there about who knew what when and who did what and where. It was asked about the wording in the decree ...If there still could be injury to Raft River? I told them I could not answer that. It would be determined at a hearing. We also discussed how "beneficial use" rights and "decreed" rights relate.

During the discussion the recording of the P/D in the SESESE S30 as recommended was questioned. Mr. Jones indicated that is not where they have diverted water and Mr. Chuck Ward, whose property it is situated, indicated there is not water diverted there for the Jones property. It

seemed that no one could explain why it was recommended there.

It was generally agreed by all present that it was more appropriate to have SRBA determine matters before it and not yet schedule a formal hearing in this matter.

After the conference Mr. Stewart indicated that he wished to withdraw his protest. I told him he needed to send me a letter indicating that is what he wanted to do.

On returning to the office I found that in addition to the protestants the following are objecting to this recommendation: Nolan K Branch, Clark W Ward, Warr Brothers & Rodney Hall.

I also found that an NOA has not been filed with the SRBA court; staff has been waiting since they apparently feel issues before the court may need to proceed.

I will hold this application without action until SRBA makes a determination unless directed otherwise.



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

April 30, 2002

Joyce Ward
PO Box 108
Almo, Idaho 83312

RE: Snake River Basin Adjudication (SRBA)
Claim No.: 43-10356

Dear Joyce,

As you requested, here are the names and addresses of the other Objectors to SRBA recommendation 43-10356:

Rodney Hall
PO Box 631
Malta, Idaho 83342
645-2519

Reid Stewart
Stewart Ranch
Malta, Idaho 83342
345-757-5933

Nolan K. Branch
1823 S 2330 E
Malta, Idaho 83342
420-0326

Clark Ward
HCX 61 Box 1560
Malta, Idaho 83342
824-5560

Warr Bros. by Olene Warr
2231 S 2350 E
Malta, Idaho 83342
645-2485

Sincerely,

Vikie Hancock
Sr. Water Resource Agent
Southern Adjudication Unit

*Copy of claim file
also delivered to
Joyce Ward this
date. DA*

RECEIVED

MAR 14 2002

Respondent Name: William D. Jones and Son

Department of Water Resources

Attorney Name & Address: ROGER D. LING
LING & ROBINSON
615 H Street, P. O. Box 396
Rupert, Idaho 83350-0396

RECEIVED

MAR 21 2002

Department of Water Resources
Southern Region

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

A. Subcase No. 43-10356

Case No. 39576

STANDARD FORM 2
RESPONSE TO OBJECTION

Please print or type the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: William D. Jones and Son

Address: c/o William D. Jones
P. O. Box 152
Almo, Idaho 83312

Daytime Phone: (208) 824-5527

Name & Address of Attorney, if any:

Attorney Name: Roger D. Ling
Ling & Robinson
Address: P. O. Box 396
Rupert, Idaho 83350
Phone Number: (208) 436-4717

C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH
YOU ARE RESPONDING

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

*Proposed
Filed
6-25-02
NAT*

INSTRUCTION FOR MAILING

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F. CERTIFICATE OF MAILING

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1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the claimant of the water right at the following address:

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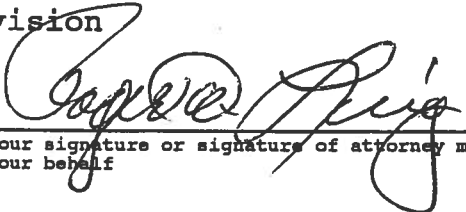
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Address: 2231 South 2350 East
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Boise, Idaho 83724


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Address: P. O. Box 396
Rupert, Idaho 83350
Phone Number: (208) 436-4717

**C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH
YOU ARE RESPONDING**

Name: Rodney Hall

Address: P. O. Box 631
Malta, Idaho 83342

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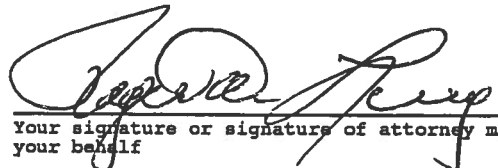
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Department of Water Resources

Attorney Name & Address: ROGER D. LING
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Address: P. O. Box 396
Rupert, Idaho 83350
Phone Number: (208) 436-4717

C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH
YOU ARE RESPONDING

Name: Clark W. Ward

Address: HC 61, Box 1560
Malta, Idaho 83342

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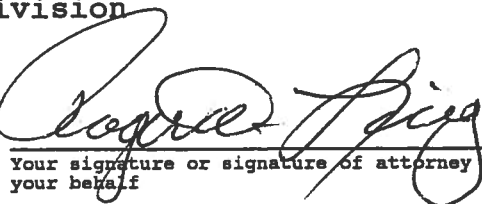
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Department of Water Resources

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615 H Street, P. O. Box 396
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Address: P. O. Box 396
Rupert, Idaho 83350

Phone Number: (208) 436-4717

C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH
YOU ARE RESPONDING

Name: Roscoe Ward

Address: P. O. Box 108
Almo, Idaho 83312

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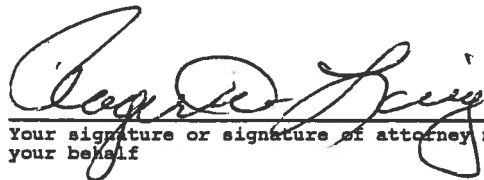
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Department of Water Resources
Southern Region

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LING & ROBINSON
615 H Street, P. O. Box 396
Rupert, Idaho 83350-0396

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In Re SRBA

Case No. 39576

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Name & Address of Attorney, if any:

Attorney Name: Roger D. Ling
Ling & Robinson

Address: P. O. Box 396
Rupert, Idaho 83350

Phone Number: (208) 436-4717

**C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH
YOU ARE RESPONDING**

Name: Reid S. Stuart

Address: Stuart Ranches
Malta, Idaho 83342

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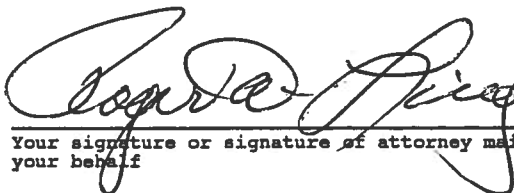
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MAR 14 2002

Department of Water Resources

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MAR 21 2002

Department of Water Resources
Southern Region

Respondent Name: William D. Jones and Son

Attorney Name & Address: ROGER D. LING
LING & ROBINSON
615 H Street, P. O. Box 396
Rupert, Idaho 83350-0396

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Daytime Phone: (208) 824-5527

Name & Address of Attorney, if any:

Attorney Name: Roger D. Ling
Ling & Robinson

Address: P. O. Box 396
Rupert, Idaho 83350

Phone Number: (208) 436-4717

C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH
YOU ARE RESPONDING

Name: Nolan K. Branch

Address: 1823 South 2330 East
Malta, Idaho 83342

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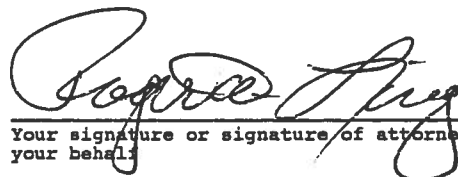
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Your signature or signature of attorney mailing on your behalf



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

May 31, 2002

David Ogren
PO Box 194
Almo, ID 83312

RE: Control Works and Measuring Devices for right 43-10356 in the name of William Jones

Dear Mr. Ogren:

As you may know the water use diverted under claim 43-10356 on Almo Creek is currently under dispute with water users from Raft River. Right 43-10356 has been recommended to the SRBA court (Copy of proof report of recommendation enclosed) but is currently objected to by several parties. Additionally a pending transfer no. 69665 attempts to change the location of the point of diversion to include a pump located within the SENE Section 32, T15S, R25E. The transfer application has been protested. Currently the objections in the SRBA court are going to be addressed first with the transfer protest resolution or proceeding to follow.

The water use for 43-10356 is somewhat unique in that it is recommended with a junior priority to other rights on Almo Creek yet curtailment of the use would not affect an increase in delivery to any other right on Almo Creek. Also the old Albion Idaho Land Company decree provides 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 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 in accordance with the priorities hereafter 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."* The recent SRBA general provisions for Basin 43 reflect that Almo Creek is separate from Raft River.

Recently a letter from Mr. Ling, attorney for Mr. Jones, outlines their current diversion practice to be in compliance with the current recommended right. (Copy of Ling's letter enclosed.)

In light of all of this it is appropriate for the department to provide direction to the watermaster to assure water is diverted appropriately until such time that the SRBA court makes a decision changing the recommendation &/or the department makes a final decision on the protested transfer application.

To be in compliance, right 43-10356 should be regulated by the watermaster of water district 43-D in the following manner. Water must be diverted at the old diversion located in the NESENW S32, T15S, R25E. A headgate and measuring device must be maintained at this location and the right limited to the recommended amount. Water from the original diversion that is injected back into Almo Creek within the SENE S32, T15S, R25E must be measured. (Owner will be required to maintain measuring device at this point of injection.) Re-diversion of the injected water by the pump in Almo Creek at this same location must also be measured and limited to no more than is being injected. (Owner is again required to maintain an adequate means of measurement and control of this re-diverted water.) If after a reasonable time the owner fails to provide adequate measurement and control the watermaster should curtail diversion.

Please be advised that Title 42, Chapter 7 of the IDAHO CODE provides for the measurement and control of water. Specifically Section 42-701 states in pertinent part:

42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING WORKS AND MEASURING DEVICES BY WATER APPROPRIATORS -- PROCEDURE UPON FAILURE TO INSTALL AND MAINTAIN -- MEASURING AND REPORTING OF DIVERSIONS -- PENALTY FOR FAILURE TO COMPLY -- ENFORCEMENT PROCEDURE -- REPORT FILING FEE.

(1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

(2) If an appropriator determines that installation and maintenance of a measuring device required by the director would be burdensome for his diversion, the appropriator may, upon approval of the director, execute an agreement with the director and submit to the director such information and technical data concerning the diversion and pumping facilities as the director

determines necessary to establish the relationship of power usage to water withdrawal by any pump used to divert public water.

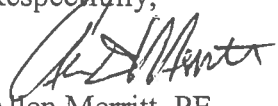
(3) Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices, or has not executed an agreement in lieu of a measuring device as provided in subsection (2) of this section, upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to section 42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

(4) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

By copy to Mr. Jones, this letter is intended to be the notice described in 42-701 (3) listed above. The department requires that Mr. Jones install such control works and measuring devices that allows for your administration as outlined above. These works must be installed on or before June 15th, 2002, unless there are other arrangements made with you or this office

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

Respectfully,


Allen Merritt, PE
Southern Region Manager

CC: Tim Luke – IDWR Water Management
William Jones
Roger Ling
Roscoe Ward

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 43-10356 V1

WATER RIGHT NUMBER: 43-10356 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WILLIAM D JONES AND SON C/O WILLIAM D JONES PO BOX 152 ALMO, ID 83312 (208)824-5527
Original Owner	WILLIAM D JONES PO BOX 152 ALMO, ID 83318 (208)824-5527

Priority Date: 04/01/1935

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
ALMO CREEK	RAFT RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/01 to 10/31	0.560 CFS	
	<u>Total Diversion:</u>	0.560 CFS	

Location of Point(s) of Diversion

ALMO CREEK	SE1/4SE1/4SE1/4	Sec. 30, Twp 15S, Rge 25E, B.M.
CASSIA County		
ALMO CREEK	NE1/4SE1/4NW1/4	Sec. 32, Twp 15S, Rge 25E, B.M.
CASSIA County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	25E	32				23.0													23.0
15S	25E	33							5.0										5.0

Total Acres: 31

Conditions of Approval:

1. C18 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.

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 43-10356 V1

Remarks:

1. Explanatory SOURCE IS ALSO KNOWN AS SOUTH ALMO CREEK.

Comments:

1. VHANCOCK 3/27/2000 RECOMMENDATION
Comment: DATE OF PRIORITY PER AFIDAVITS IN FILE. POD PER GIS AND CLAIMANT. DIVERSION OCCURS BELOW CONFLUENCE OF ALMO AND EDWARDS CREEKS. IRRIGATED ACRES LOCATED AND CALCULATED BY ARCVIEW GIS & REFLECTS A DECREASE IN ACRES DUE TO HUMAN RE-LOCATION OF RIVER PRIOR T
2. vhancock 6/26/2001 POD
Comment: CORRECTED POD AFTER REVIEW IN RESPONSE TO NOE PROCESS.

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag: NONE RECEIVED
State or Federal:
Owner Name Connector: 0
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed: False
DLE Act Number:
Carey Act Number:
Mitigation Plan: OR

SubCase:

SubCase Number: 43-10356
Class: 2
SF5 Filed Date:
Special Master Recom Signed Date:
Attorney Assigned:
Adjudication Agent: Vikie Hancock
Basis of Claim: Beneficial Use
Date Filed: 2/7/2002 Objection Status: Active
Date Filed: 2/4/2002 Objection Status: Active
Date Filed: 2/4/2002 Objection Status: Active
Date Filed: 2/4/2002 Objection Status: Active
Date Filed: 1/31/2002 Objection Status: Active
Date Filed: 1/31/2002 Objection Status: Active

RECEIVED

FEB - 7 2002

RECEIVED

FEB 12 2002

Department of Water Resources
Southern Region

Department of Water Resources

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

A. Subcase 43-10356
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name:

Address:

Daytime Phone:

Rodney Hall
P.O. Box 631
Malta IDAHO 83342
645-2519

Name & Address of Attorney, if any:

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name:

Address:

William D Jones and son / c/o William D Jones
P.O. Box 152
Almo Idaho 83312

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____

11. I object because:

☒ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): No such water
Right

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.

County of Cassia)

Redney Hall , duly sworn, upon oath, deposes and says:
(Name of person filing objection)

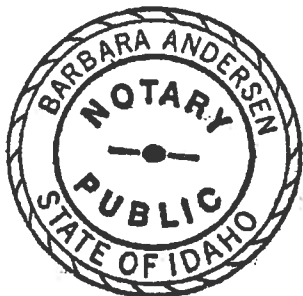
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Redney Hall
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

1-30-02



Barbara Andersen

Notary Public for Idaho

Residing at: Albion, Id

My Commission Expires: 7-23-05

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G.

CERTIFICATE OF MAILING

I certify that on 6 Feb, ~~1998~~ I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: William D. Jones and son c/o William D. Jones
Address: P.O. B 152
Almo, Idaho 83312

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Signature of Objector or attorney
mailing on Objector's behalf

RECEIVED
FEB 08 2002
Department of Water Resources
Southern Region

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FEB - 4 2002
Department of Water Resources

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

A. Subcase 43-10356
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Reid A. Stewart

Address: Stewart Ranch

Mallett Lot 83342

Daytime Phone: 435 757 5933

Name & Address of Attorney, if any:

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: William D. Jones & son c/o William D. Jones

Address: P.O. Box 152

Almo, Idaho 83312

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**

Should be: _____

2. ☐ **Source**

Should be: _____

3. ☐ **Quantity**

Should be: _____

4. ☐ **Priority Date**

Should be: _____

5. ☐ **Point(s) of Diversion**

Should be: _____

6. ☐ **Instream Flow Description**

Should be: _____

7. ☐ **Purpose(s) of Use**

Should be: _____

8. ☐ **Period of Year**

Should be: _____

9. ☐ **Place of Use**

Should be: _____

11. **I object because:**

☒ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):** _____

No such water right

F.

VERIFICATION (Must be Completed)

State of Idaho)
County of Cassia)ss.

Rick Adtwait, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

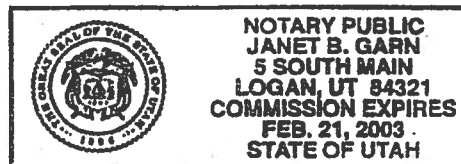
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Rick Adtwait
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: February 1, 2002

Janet B. Garn
Notary Public for State of Utah
Residing at: Logan, UT
My Commission Expires: 2-21-2003



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FEB 08 2002
Department of Water Resources
Southern Region

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

A. Subcase 43-10356

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Nolan K Branch

Address: 1823 S. 2330 E

Malta Id. 83342

Daytime Phone: 420-0326

Name & Address of Attorney, if any:

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: William O. Jones and Son / c/o William O. Jones

Address: PO Box 152

Almo, Idaho 83312

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**

Should be: _____

2. ☐ **Source**

Should be: _____

3. ☐ **Quantity**

Should be: _____

4. ☐ **Priority Date**

Should be: _____

5. ☐ **Point(s) of Diversion**

Should be: _____

6. ☐ **Instream Flow Description**

Should be: _____

7. ☐ **Purpose(s) of Use**

Should be: _____

8. ☐ **Period of Year**

Should be: _____

9. ☐ **Place of Use**

Should be: _____

11. **I object because:**

☒ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): _____

No such water right

F.

VERIFICATION (Must be Completed)

State of Idaho)
)ss.

County of Cassia).

Nolan K Branch, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

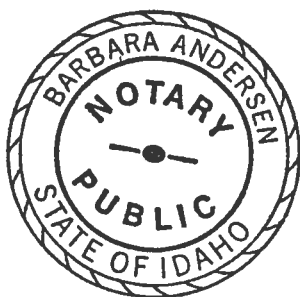
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

[Signature]
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

1-30-02



[Signature]
Notary Public for Idaho
Residing at: Albion, Id
My Commission Expires: 7-23-05

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on Jan 30, ~~1998~~ ²⁰⁰², I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

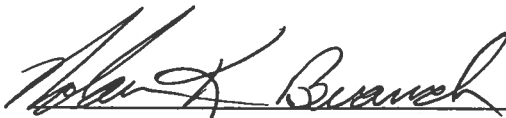
Name: William D Jones and Son /d/o William D Jones
Address: PO Box 152
Almo, Id. 83312

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

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Department of Water Resources
Southern Region

Department of Water Resources

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

A. Subcase

43-10356

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name:

Clark W Ward

Address:

HC 601 Box 1560

Malta, Idaho 83342

Daytime Phone: 208-824-5560

Name & Address of Attorney, if any:

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name:

William D Jones + Son

Address:

PO Box 152

Almo, Idaho 83312

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____

11. I object because:

☒ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): _____

There is no such water right.

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.

County of Cassia)

Clark W Ward, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

[Signature]
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

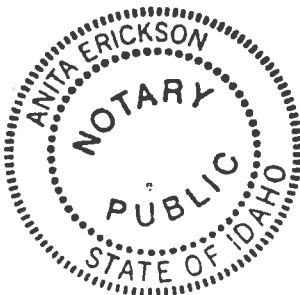
January 31, 2002

Anita Erickson

Notary Public for Idaho

Residing at: Almo Idaho

My Commission Expires: 11-12-2005



INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on February 1, ~~199~~²⁰⁰², I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: William D Jones & Son
Address: PO Box 152
Almo, Idaho 83312

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

RECEIVED

FEB 08 2002

Department of Water Resources
Southern Region

RECEIVED

FEB - 4 2002

Department of Water Resources

F.

VERIFICATION (Must be Completed)

State of Utah)
County of Cassid) ss.

WARR Bros. Olive Water, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

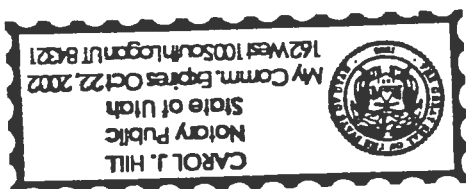
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

WARR Bros by Olive Water
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

February 1, 2002



Carol J. Hill
Notary Public for State of Utah
Residing at: 16220 100th St
My Commission Expires: Oct 22, 2002

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**

Should be: _____

2. ☐ **Source**

Should be: _____

3. ☐ **Quantity**

Should be: _____

4. ☐ **Priority Date**

Should be: _____

5. ☐ **Point(s) of Diversion**

Should be: _____

6. ☐ **Instream Flow Description**

Should be: _____

7. ☐ **Purpose(s) of Use**

Should be: _____

8. ☐ **Period of Year**

Should be: _____

9. ☐ **Place of Use**

Should be: _____

11. **I object because:**

☒ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):** no such water

right

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on Feb. 1, 1992, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: William D Jones & Sons co William D Jones
Address: PO Box 152
Twin Falls Id 83312

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Wm Brother by Aline Wam
Signature of Objector or attorney
mailing on Objector's behalf

RECEIVED

FEB 08 2002

Department of Water Resources
Southern Region

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

A. Subcase 43-10356

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Iwan Brothers by Elene Iwan

Address: 2231 South 2350 E.
MAITA, Id. 83342

Daytime Phone: 208 645-2485

Name & Address of Attorney, if any:

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: William D Jones & Sons Co with D Son

Address: PO. 152
Almo Id 83312

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JAN 31 2002

Department of Water Resources

RECEIVED

FEB 08 2002

Department of Water Resources
Southern Region

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

A. Subcase 43-10356

(Insert water right number)

Case No. 39576

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: ROSCOE WARD

Address: P.O. BOX 108

ALMO, IDAHO 83312

Daytime Phone: 208-824-5591

Name & Address of Attorney, if any:

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: WILLIAM D. JONES AND SON / C/O WILLIAM D. JONES

Address: P.O. BOX 152

ALMO, IDAHO 83312

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____

11. I object because:

☒ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): _____

NO SUCH WATER RIGHT.

F. **VERIFICATION** (Must be Completed)

State of IDAHO)
)ss.
County of CASSIA)

ROSCOE WARD, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

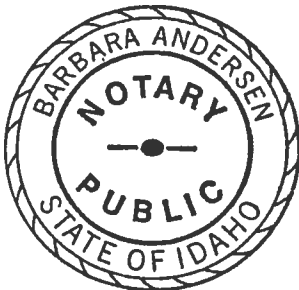
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Roscoe Ward
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

1-30-02



Barbara Andersen
Notary Public for IDAHO
Residing at: Albion, Id
My Commission Expires: 7-23-05

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on JANUARY 30, ⁸³~~199~~, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: WILLIAM D. JONES AND SON C/O WILLIAM D. JONES
Address: P.O. BOX 152
ALMO, IDAHO 83312

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Roscoe Ward
Signature of Objector or attorney
mailing on Objector's behalf



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.

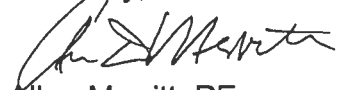
Please note that to divert water in Idaho without a valid water right is illegal pursuant to §42-351, Idaho Code and subject to civil penalties outlined in §42-1701B, Idaho Code which provide for \$50 per 0.1 cfs per day up to a maximum penalty of \$50,000 per year.

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

authorized.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Merritt", written over the word "Sincerely,".

Allen Merritt, PE
Southern Region Manager

CC: Tim Luke & Norm Young - IDWR State Office
Vikie Hancock – IDWR SRBA
Gary Jones - Water District 43D Secretary

06/26/2001

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

RIGHT NUMBER: 43-10356

NAME AND ADDRESS: WILLIAM D JONES AND SON
C/O WILLIAM D JONES
PO BOX 152
ALMO ID 83312

SOURCE: ALMO CREEK

TRIBUTARY: RAFT RIVER

QUANTITY: 0.560 CFS

PRIORITY DATE: 04/01/1935

POINT OF DIVERSION:

T15S R25E S30 SESESE Within CASSIA County
T15S R25E S32 NESENW 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	0.560 CFS

PLACE OF USE: IRRIGATION Within CASSIA County

T15S R25E S32	SENE	23.0	T15S R25E S33	SWNW	5.0
---------------	------	------	---------------	------	-----

28 ACRES TOTAL

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

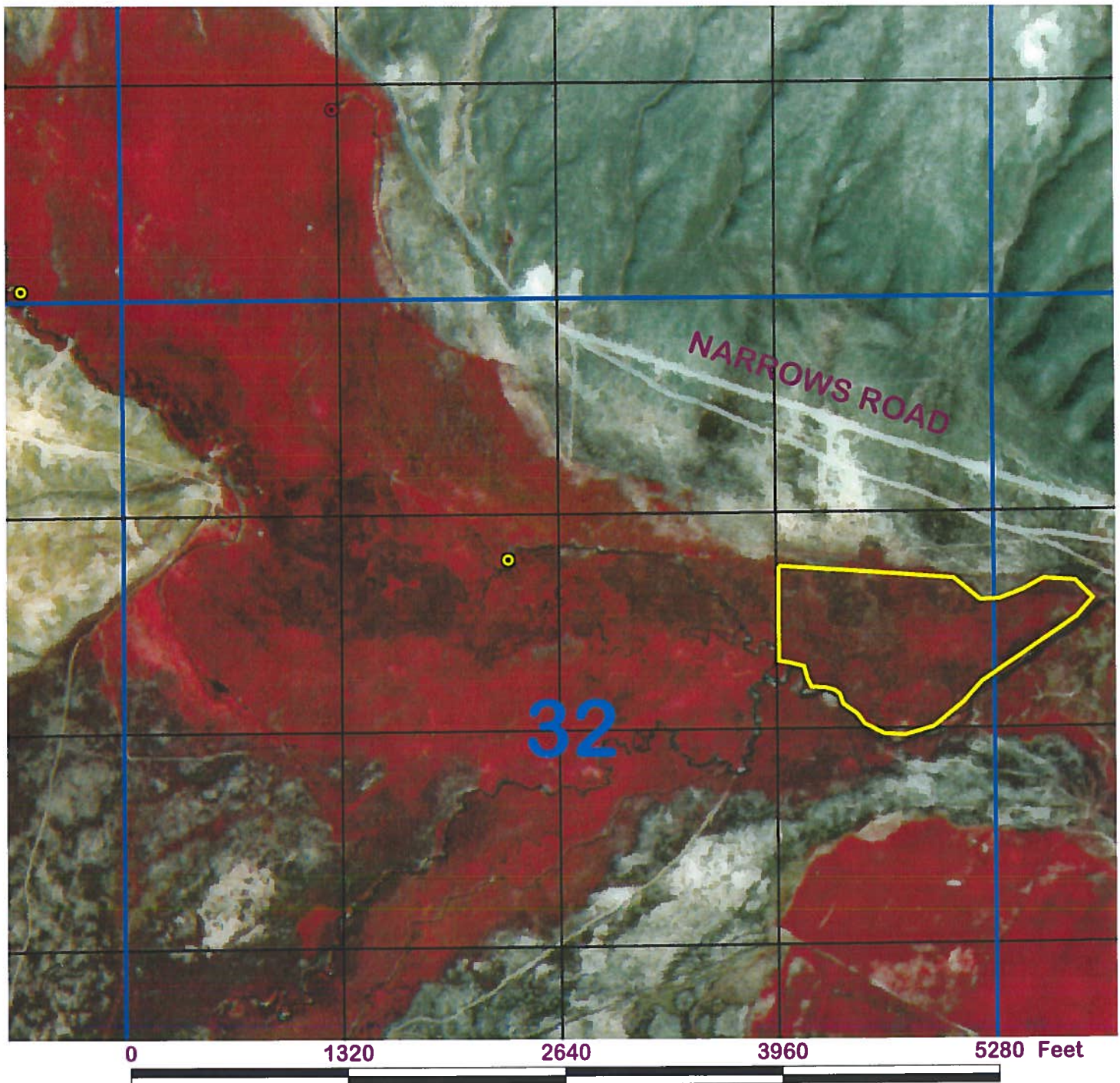
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY
FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF
THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A
POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION
42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use
SOURCE IS ALSO KNOWN AS SOUTH ALMO CREEK.

Idaho Department of Water Resources

RIGHTS: 43-10356

RECOMMENDED PLACE OF USE
TWP 15S, RNG 25E
Data entry on June 25, 2001



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



GIS PLACE OF USE PRESENTATION
1987/1988 NAPP AERIAL PHOTOGRAPHY
PREPARED BY VIKIE HANCOCK



UNITED STATES BOARD ON GEOGRAPHIC NAMES

In reply please use this address:
U. S. Geological Survey
523 National Center
Reston, Virginia 20192-0523

RECEIVED

APR 02 2001

Department of Water Resour.
Southern Region

March 13, 2001

Ms. Vikie Hancock
Senior Water Resources Agent
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Dear Ms. Hancock:

We are pleased to inform you that the U.S. Board on Geographic Names, at its February 8, 2001 meeting, approved the proposal to change the application of the names Almo Creek and Edwards Creek for streams in Cassia County. This decision was made in agreement with the recommendation of the Idaho Geographic Names Advisory Council. The changes have been entered into the Nation's official automated geographic names repository and will appear in Decision List 2001. The entries will read as follows.

Almo Creek: stream, 21 km (13 mi) long, in Sawtooth National Forest; heads in the Albion Mountains, at the S end of Almo Park at 42°08'49"N, 113°43'55"W, flows generally E and SE through the community of Almo, to join Raft River at the mouth of Johnson Creek; named for the nearby community of Almo; Cassia County, Idaho; Tps15&14S,Rgs25-23E,Boise Mer; 42°04'33"N, 113°33'16"W; USGS map - Jim Sage Canyon 1:24,000 (mouth of feature); Not: Edwards Creek - in part, South Almo Creek.

Edwards Creek: stream, 11.3 km (7 mi) long, in Sawtooth National Forest; heads 1.9 km (1.2 mi) S of Cache Peak at 42°10'29"N, 113°39'22"W, flows SSW for 1.6 km (1 mi) then SE for 9.7 km (6 mi) to enter Almo Creek (q.v.) 3.2 km (2 mi) ESE of the community of Almo; Cassia County, Idaho; Tps15&14,Rgs25&24E,Boise Mer; 42°08'49"N, 113°43'55"W; USGS map - Jim Sage Canyon 1:24,000.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Roger L. Payne".

Roger L. Payne
Executive Secretary
U.S. Board on Geographic Names



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

COMMUNICATION DOCUMENTATION

From: Vikie Hancock

6/28/2001

Regarding:

Contact:

43-10536, -2479, -2538

Bill and Rodney Jones

The above claimants called concerning the revised claims that I sent them on June 26th.

They were concerned about the combined acre limit that I put on the groundwater licenses. I explained the overlapping acres as they were originally licensed and that allowing them to irrigate 154 acres under 43-2479 and then a separate 140 acres under 43-2538 would expand the acres originally licensed. I said that the department was accepting that before 1987 they had moved the location of the lands they irrigated without them having filed a transfer, but would not allow that to expand the original number of acres. . I told them that to better understand what I was explaining they may want to get out their original licenses and compare the acres, and that if they didn't have copies I could get them ones.

Rodney stated that he thought the points of diversion on Almo Creek were too far west. I told them that I had attempted to correct my recommendation to the points that they had originally claimed. I explained that I had been confused about the point they had located in the NWNE and so had gone out there and walked the ditch. He asked me if the point I had GPS'd was the place where the water started in the channel and the channel turned south. I said no. I said that point was not where the man-made ditch began but that I could tell the channel as it continued west of that point was also a man-made conveyance. It looked like Almo Creek was now flowing into that, but it would not have had a ditch not been dug there years ago. Bill Jones said that Floyd Knight dug the ditch.

Bill Jones said the diversion at the pump was on their property. I said it didn't matter to me whose property it was on, but that they would need to file a transfer of point of diversion. They asked me if I thought there would be any problem with that. I told them that that was not my issue. My issue was to recommend the rights as they existed in 1987 and that they needed to get approval from the department to change any element after that. They reminded me that both Frank Hitchcock and I had told them that they may want to wait until they received a partial decree before mucking up the works with a transfer. I told them that there were pros and cons to waiting and that if they wanted to file a transfer immediately they could do so.

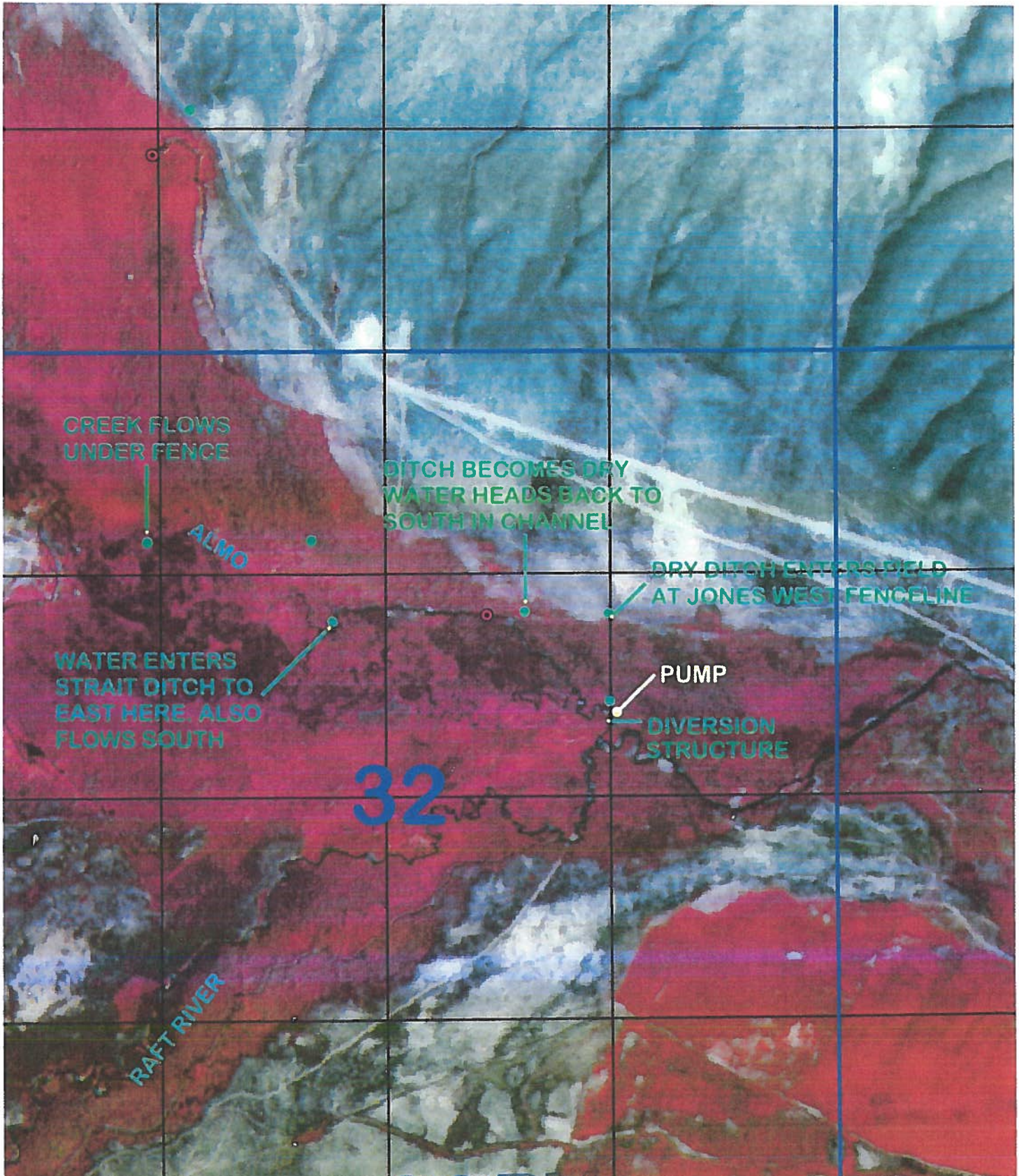
Note that at the time Frank Hitchcock and I gave the advice that they may want to wait until the partial decree was issued on this beneficial use right before they filed a transfer, the Jones had not yet brought in a power line or installed a permanent pump station in Almo Creek at the current new point of diversion.

-D&K

FIELD NOTES

● GPS POINTS COLLECTED 6-20-2001

TWP 15S, RNG 25E



6-20-01

Waypt 1

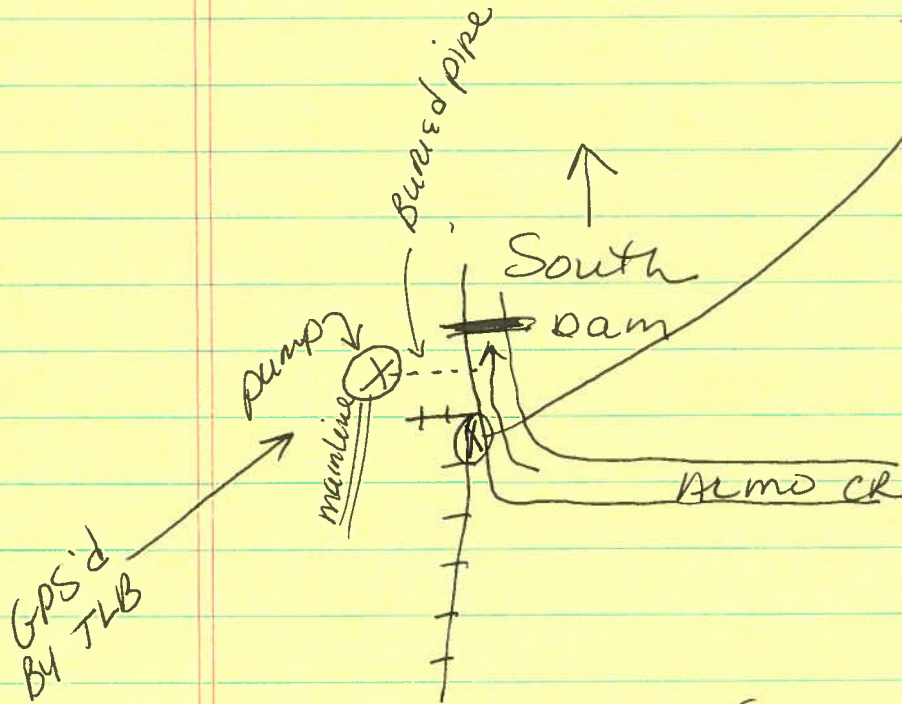
N of division at fence corner

6:20

2:38 pm

536870

108 5841



Gauge reading = 65 psi

20 hp pump

impeller 6.5

Cat # JPM2514T

Spec 39K036W669

Volts 230/460

Amps 49/24.5

RPM 3525

Encl OPEN

depth to water

approx 10 ft

mainline 7" diam per type

handlines 2"

1 line birds running - counted 23

6-20-01
UH

Waypt 2

536869
108741

Dry ditch enters field at Jones W. fence



Waypt 3

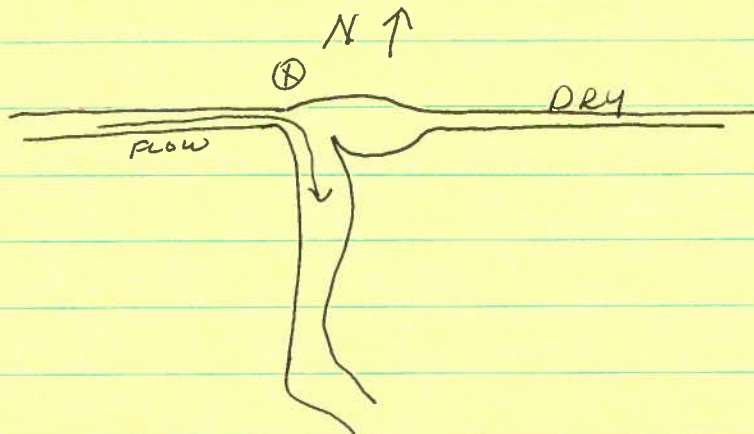
536717
108744

dry ditch hits water

flow goes south, dry goes west
flow comes from strait channel going
due west by compass

Photo #5 looking at dry ditch pointing
due east

Photo #6 looking due west



6-20-01
UH

Waypt 4

536373
108726

Broken fence line

Waypt 5

536335
108821

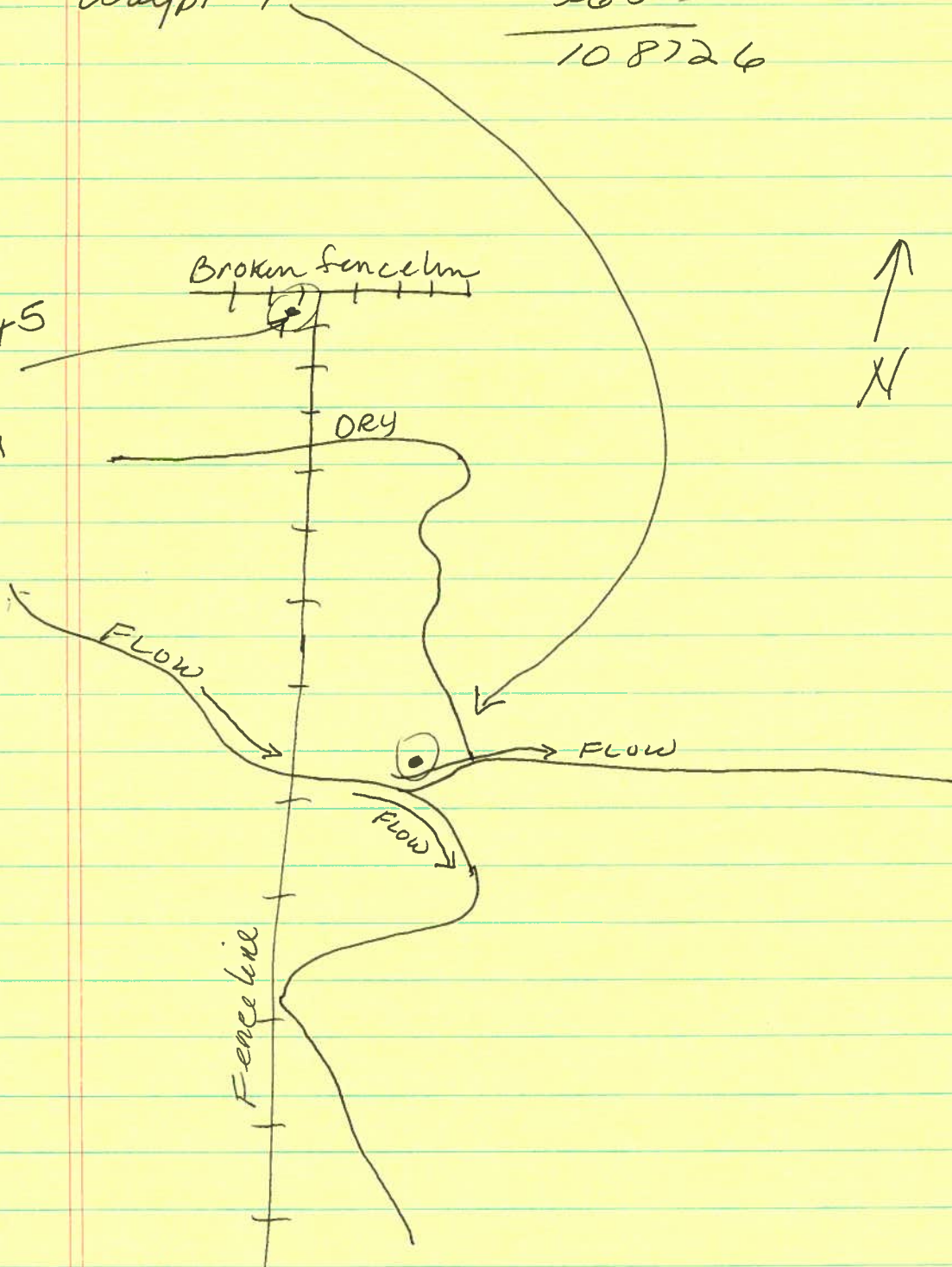
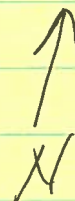
Dry

Flow

Flow

Flow

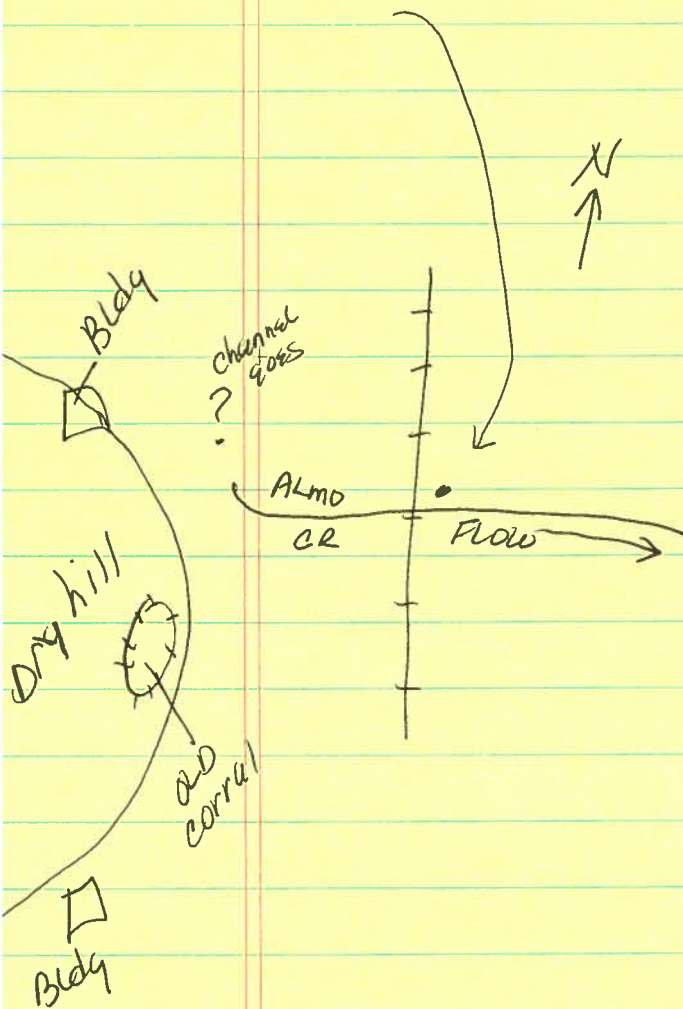
Fence line



6-20-01
NA

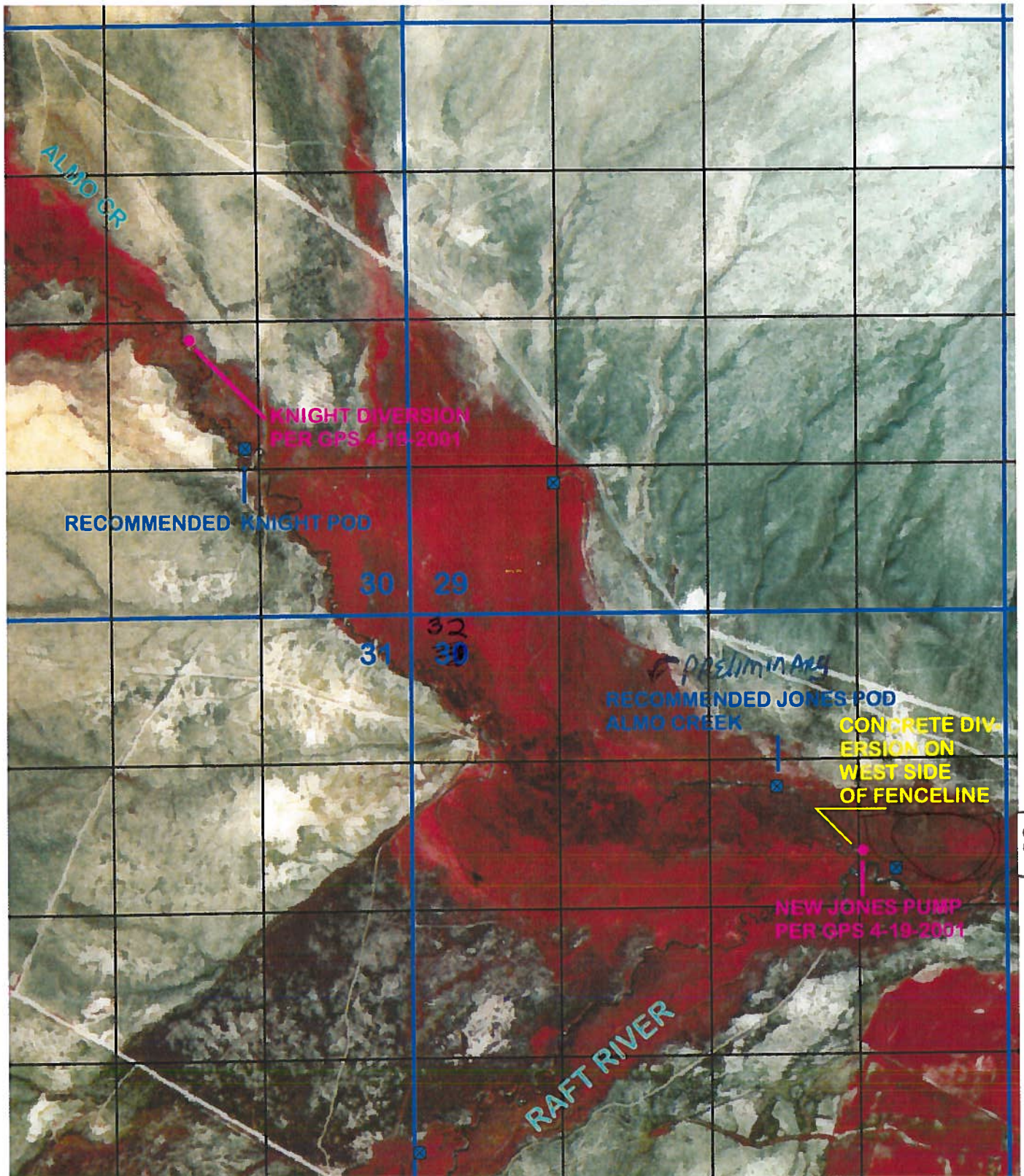
Waypt 6

536043
108867



Waypt 7 on Narrows Rd just N of
Spring.

TWP 15S, RNG 25E

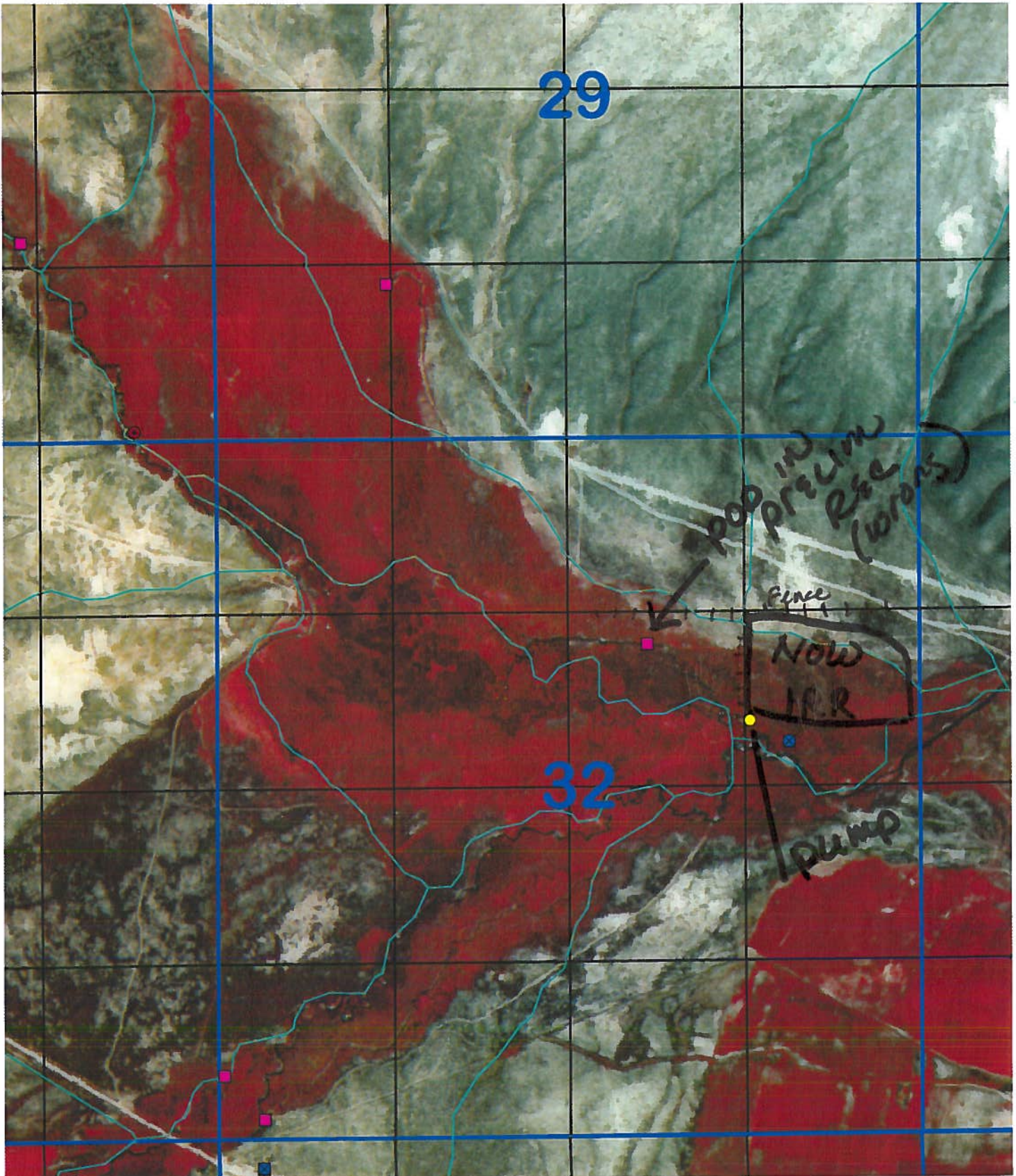


GPS Data Collection
April 19, 2001
BY TERRY BLAU

1987 AERIAL PHOTOGRAPHY

FIELD NOTES

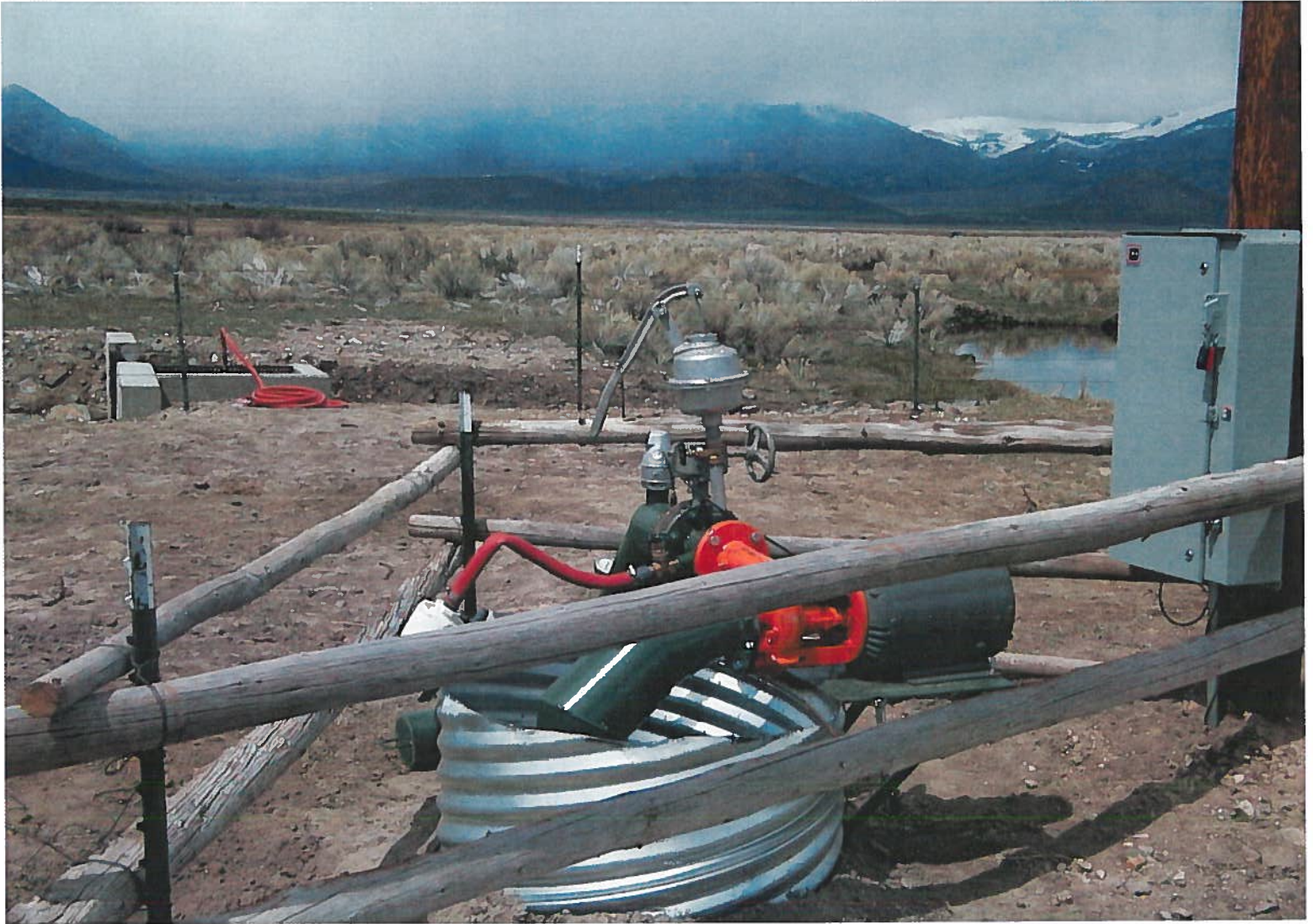
TWP 15S, RNG 25E



V HANCOCK

Date: 6-20-2001 *VH*

1987/1988 NAPP PHOTOGRAPHY



PUMP IN SETE

DIVERSION IN SWNE

Approx 100' upstream of Raft River on
channel that may be part of Almo Cr



Looking from upstream at diversion & new pump.



New diversion works SE SW NE Sec 30
Pump is in SW SE NE across fence line
Photo by Terry Blau 4-19-2001 Looking due North.



Land recently plowed. 4-19-2001 Photo
SE NE Sec 30

10/31/2000

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

RIGHT NUMBER: 43-10356

NAME AND ADDRESS: WILLIAM D JONES AND SON
C/O WILLIAM D JONES
PO BOX 152
ALMO, ID 83312

WILLIAM D JONES
PO BOX 152
ALMO, ID 83312

SOURCE: ALMO CREEK TRIBUTARY: RAFT RIVER

QUANTITY: 0.56 CFS

PRIORITY DATE: 04/01/1935

POINT OF DIVERSION: T15S R25E S32 NESWNE 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	0.56 CFS

PLACE OF USE:

<u>IRRIGATION Within CASSIA County</u>				
T15S R25E S32	SENE	23	T15S R25E S33	SWNW 5
28 ACRES TOTAL				

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 - Beneficial Use

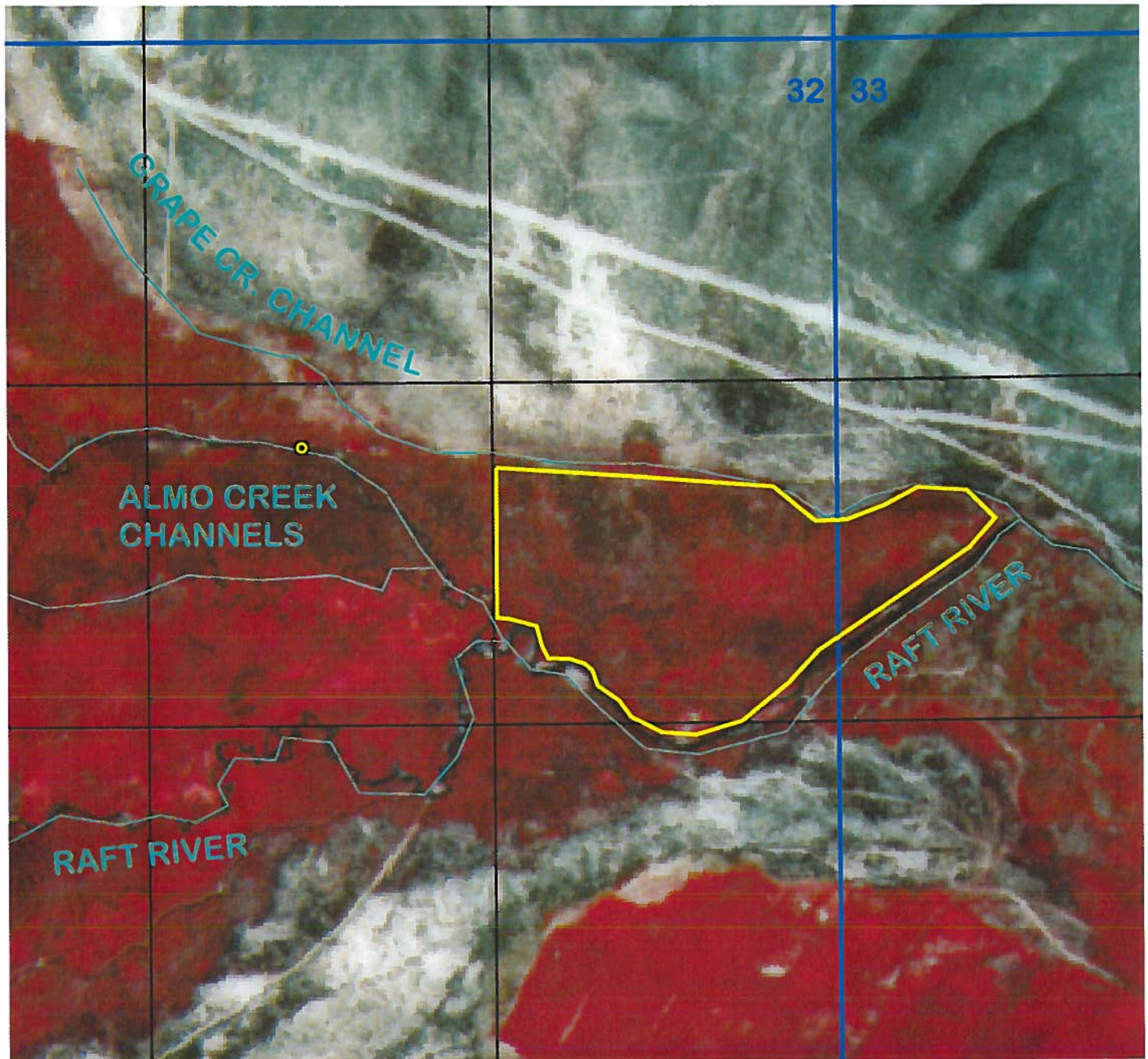
SOURCE IS ALSO KNOWN AS SOUTH ALMO CREEK.

PRELIMINARY - SUPERCEDED

Idaho Department of Water Resources

RIGHT: 43-10356

RECOMMENDED PLACE OF USE
TWP 15S, RNG 25E, Sec 32, 33
Data entry on October 30, 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

PRELIMINARY - Superseded

CLAIM NUMBER: A43-10356

0.4245

Stage: BENEFICIAL USE

CASSIA County
CASSIA County

RESU RE

TOTAL ACRES 73.0

22/02/2020

Field Inspection Flag:

Presumption Flag:

lem
S. Almo AKA almo
BB9 - 43D
B01

NOTE TO FILE

From: Vikie Hancock

3/24/00

Regarding: Claim number **Various, William Jones**

Mr. Bill Jones came in this date to further review his irrigation claims and to give me some proofs of priority for his beneficial use claim number **A43-10356** on Almo Creek. In reviewing this claim, we used a 1956 ASCS aerial photo that Mr. Jones had acquired, a 1978 ASCS aerial photo and 1987 NAPP photography used as a layer in ARCVIEW. It became apparent from the photos that the Jones' changed the course of Raft River to run diagonally through the SENE Section 32 and SWNW Section 33 sometime before 1978. This change in channel location prevented any flood irrigation from Almo Creek reaching land to the south and east of this channel without some sort of pipeline or flume across Raft River. Mr. Jones stated that they did not use any such device to convey water from Almo Creek across Raft River. The Jones ²⁸ have continued to use water from Almo Creek on approximately ~~31~~ acres.

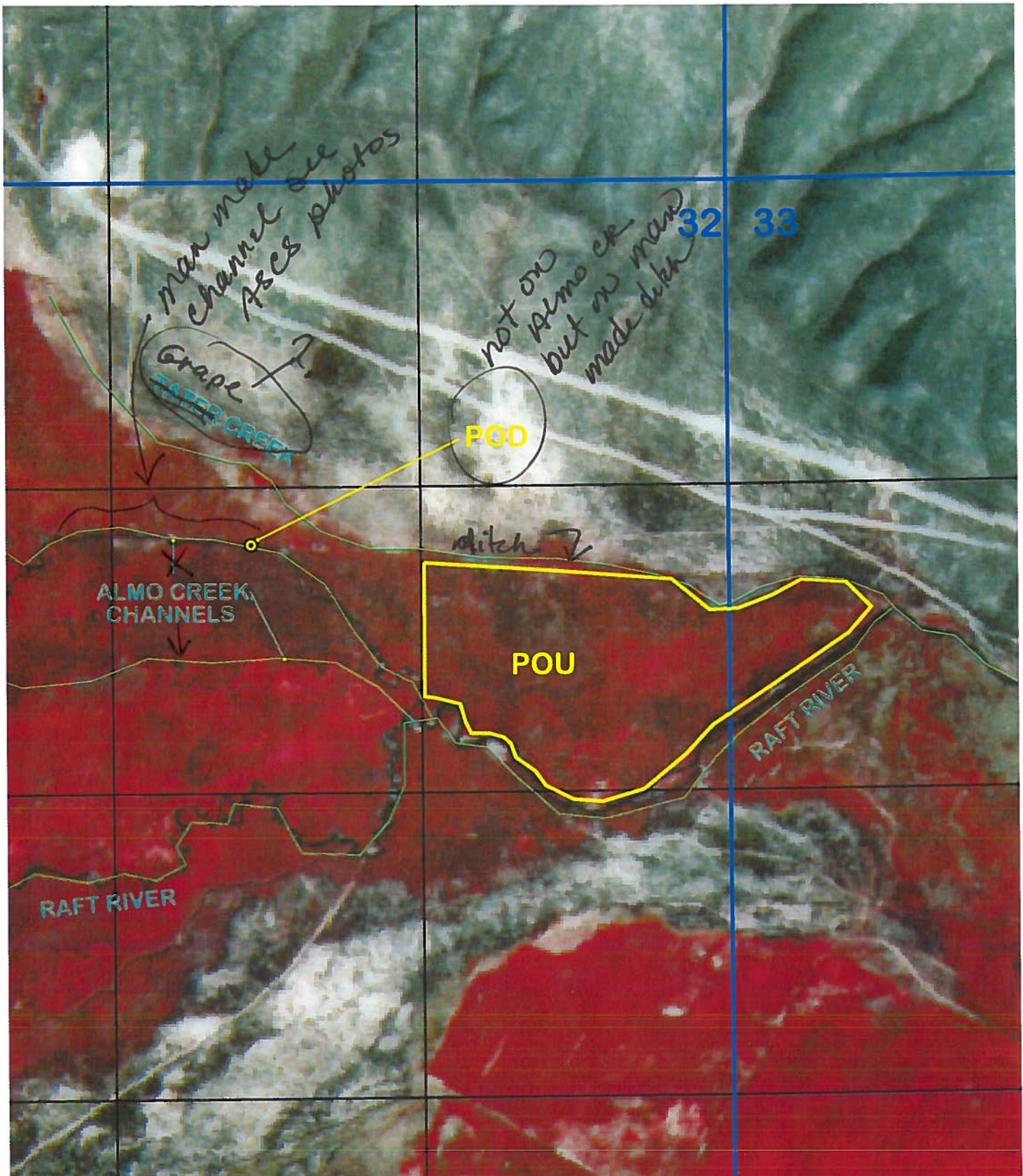
Although it appears that they began using Almo Creek to irrigate all their land originally on the north side of Raft River in the early 1940s or late 1930s, they have not used it on land to the southeast of the re-located Raft River channel since at least 1978. Mr. Jones stated that they have conveyed Raft River water to that area using ditches from the point of diversion in the SWSW Section 32, and they began using water from the well located in the SWSESW Section 32 to irrigate that property using sprinkler lines. I told Mr. Jones that based upon the information I had, I was inclined to limit my recommendation for this claim to the ~~31~~ ²⁸ acres he has continued to irrigate since the late 1930s.

*See photos & GPS point collected 4-19-2001
by T. Blau.*

FILE NOTES

TWP 15S RNG 25E

43-10356



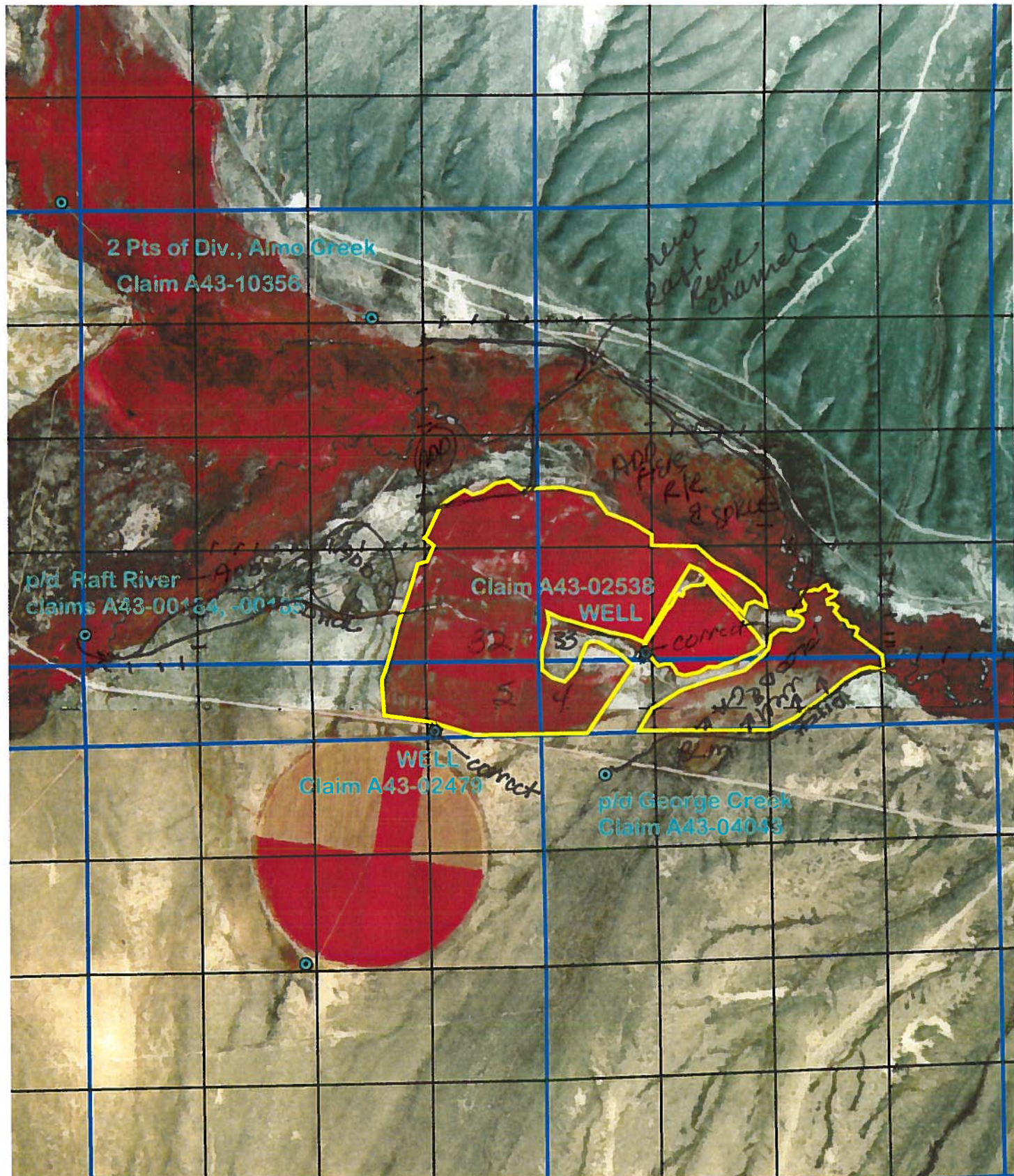
OVERVIEW

DESK REVIEW
FIELD NOTES

234 AC SHOWN

CLAIM NO(S): A43-00184, A-43-00185,
A43-04043 A43-02479, A43-02538, A43-10356

TWP 15S, RNG 25E, Sec 32, 33
TWP 16S, RNG 25E, Sec 4, 5



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 one of the laterals. 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 Statutory claim on George Creek – claimed priority 1920.

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 showed me the ditch and place of use for George Creek and they both said that they hardly ever got any water down that far. 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 stackyard I had not

included in the irrigated place of use per my GIS print-out was now all irrigated. I said that I was charged by the legislature to determine and recommend the number of irrigated acres as of 1987, and that was why we had the 1987 NAPP photos taken. I told them that they were obligated to inform the department of any changes in the place of use, and that we were only letting go any changes done prior to the commencement of the adjudication. They said that they were also going to put in another small pivot. I told them that they needed to apply for a transfer of place of use and that the number of acres they would have to work with would be those found irrigated with valid water rights as of 1987. They thought that they would not increase any acres by putting in another pivot and I said they were probably correct. I mentioned to them that the Department's reason for needing to approve changes in water right use was demonstrated by their recent difficulty in diverting water from Raft River from a point they had used for years.

A43-00184 and A43-00184 – based upon decrees in the Jobe Adams

These two rights, from 1882 and 1883 are pretty strait-forward. The place of use has been moved around due to dynamics of the Raft River and probably easier methods of moving water to better ground. One of the rights is over-claimed on acres. I told them that they would be limited to the number of acres identified in the Jobe Adams Decree. There is every indication that the water from Raft River has been continuously used in accordance with these decrees. Rodney showed me the location of the 1987 ditches and places irrigated.



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

March 8, 2000

William and Rodney Jones
PO Box 143
Almo, Idaho 83312

RE: Snake River Basin Adjudication (SRBA)
Claim No.: A43-11220 for Stockwater

Dear William and Rod,

Enclosed find two copies of the printed Notice of Claim and a receipt for the stockwater claim we put together yesterday. I double checked the beginning and ending points of diversion and did find an error. I think that the point where the river enters your place in section 32 is the SWSENE. I sent along a map with the river identified, because I think that, at the time, we became mixed up on which line was the river.

I also changed the place of use slightly. I added the NESE of Section 32, and corrected the NWSW Section 33 to read the NESW Section 33. Check the map and see if you agree.

Keep in touch on those proofs of priority needed for A43-04043 (Geroge Cr) and A43-10356 (Almo Cr), and let me know if I can be of any help. Thanks for coming in and helping me to understand your system.

Sincerely,

Vikie Hancock
Sr. Water Resource Agent

ASCS AERIAL PHOTO 1978

CLAIM A43-10354

29 28
32 33

Chad
Location
of Raft
River
Channel

22

9-17-56

YT-3R-

ALMO CREEK

DITCH FROM ALMO CREEK

RAFT RIVER

WARRIOR RD

ORIGINAL LOCATION
OF RAFT RIVER CHANNEL
THROUGH JONES PROPERTY

RECEIVED

MAR 23 2000

Department of Water Resources
Bozeman, Montana

T 15 S R 25 E Sec 32, 33
T 16 S R 25 E Sec 4, 5

1956
PHOTO

A43-10356



NW
HEL

4 NW
12.3 HEL

5 NW
2012 HEL

N.C.

8
246

NW
HEL

33 241
4 3
9 10

TO: WILLIAM D. JONES
FROM: FRANK HITCHCOCK
DATE: 05-08-1997

RE: CHANGE POINT OF DIVERSION IN SRBA CLAIM A43-10356; CHANGE
THE POINT OF DIVERSION FOR SRBA CLAIMS A43-00184 AND A43-
00185.

When we last talked way back on February 17 of this year about the changes I've noted up above you were going to make up a detailed description of the elements of the usages that you wanted to change.

We made up a draft map of some points of reference and you were going to work on getting it lined out to your satisfaction.

You may remember that you started out talking with Georgia Satterlee and then I came in as the person responsible for reviewing claims in your area.

We are both planning work for the future and wanted you to know that we would like to be of help when it is conveneient for you to come up again.

Please call the office at 733-3033 to make an appointment to see us and we can take as much time as we need to. If you need to call after business hours please call 736-4753 extension 233 to leave a voice mail message for me.

If you have any questions I can help with as you prepare your changes please call. I'm available Tuesday, Thursday and Friday.

best wishes,

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A43-00184, -00185

✓
-10356.

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

February 17, 1997 11:33am

NAME:
WILLIAM D. JONES AND SON

RE:
CHANGE POD/BU CLAIM IN SRBA
TRANSFER POD/DECREE USAGE
FROM RAFT RIVER.

ASKED BY GEORGIA SATTERLEE TO REVIEW WITH HER AND JONES THE STATUS OF THE BU CLAIM AND THE DECREED RIGHT CLAIM ASSIGNED TO ME FOR REVIEW IN THE UPPER RAFT RIVER VALLEY.

CLAIMANT WANTS TO CHANGE POINT OF DIVERSION FOR BU CLAIM FILED IN THE SRBA A43-10356. REVIEWED AND MARKED A MAP FOR REFERENCE.

CLAIMANT WANTS TO MOVE THE CLAIMED POD FOR A43-00184/-00185 TO A NEW LOCATION WEST OF THE CLAIMED POU NEAR THE NARROWS ROAD. REVIEWED THE PREVIOUSLY (1992) NOTED ERROR IN THE LEGAL FOR THE CLAIMED POD NOTED BY KKC BUT NOT CHANGED.

AS TIME WAS RUNNING OUT ON FRIDAY AFTERNOON CLAIMANT AGREED TO MAKE UP A DETAILED DESCRIPTION OF HOW/WHAT ELEMENTS HE WANTS TO CHANGE AND WILL CALL FOR AN APPOINTMENT TO COME IN.

RECEIVED

MAR 14 2002

Respondent Name: William D. Jones and Son

Department of Water Resources

Attorney Name & Address: ROGER D. LING
LING & ROBINSON
615 H Street, P. O. Box 396
Rupert, Idaho 83350-0396

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

A. Subcase No. 43-10356

Case No. 39576

STANDARD FORM 2
RESPONSE TO OBJECTION

Please print or type the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: William D. Jones and Son

Address: c/o William D. Jones
P. O. Box 152
Almo, Idaho 83312

Daytime Phone: (208) 824-5527

Name & Address of Attorney, if any:

Attorney Name: Roger D. Ling
Ling & Robinson

Address: P. O. Box 396
Rupert, Idaho 83350

Phone Number: (208) 436-4717

**C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH
YOU ARE RESPONDING**

Name: Roscoe Ward

Address: P. O. Box 108
Almo, Idaho 83312

D. I am responding to the objections to the following elements.
(Please check the appropriate box(es).)

- 1. ☐ Name and Address
- 2. ☐ Source
- 3. ☐ Quantity
- 4. ☐ Priority Date
- 5. ☐ Point(s) of Diversion
- 6. ☐ Instream Flow Description
- 7. ☐ Purpose(s) of Use
- 8. ☐ Period of Year
- 9. ☐ Place of Use

11. Recommendation:

- ☒ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. VERIFICATION (Must be Completed)

State of Idaho)
County of Minidoka) ss.

Roger D. Ling, duly sworn, upon oath, deposes and says:
(Name of person filing response)

That I am the party/claimant filing this response as defined by I.C. §42-1401A(1) and (6), or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and that the statements are true to the best of my knowledge and belief.

(Signature of person filing response)

Roger D. Ling
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: March 13, 2002.

JUDY BARNES
NOTARY PUBLIC
STATE OF IDAHO

Judy Barnes
Notary Public for Idaho
Residing at: Rupert, Idaho
My Commission expires: 02/12/2005

INSTRUCTION FOR MAILING

You must mail the response, including all attachments, to the Clerk of the Court. FAX filings will not be accepted. You must also send a copy to all parties listed below in the Certificate of Mailing.

F. CERTIFICATE OF MAILING

I hereby certify that on March 13, 2002, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: William D. Jones and Son
Address: c/o William D. Jones
P. O. Box 152
Almo, Idaho 83312

3. One copy to the party who filed the objection at the following address:

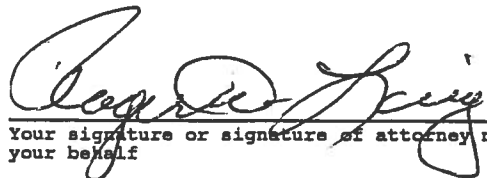
Name: Roscoe Ward
Address: P. O. Box 108
Almo, Idaho 83312

4. Copies to:

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

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

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 033
Boise, Idaho 83724


Your signature or signature of attorney mailing on your behalf

RECEIVED

MAR 14 2002

Department of Water Resources

RECEIVED

MAR 21 2002

Department of Water Resources
Southern Region

Respondent Name: William D. Jones and Son

Attorney Name & Address: ROGER D. LING
LING & ROBINSON
615 H Street, P. O. Box 396
Rupert, Idaho 83350-0396

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Attorney Name: Roger D. Ling
Ling & Robinson

Address: P. O. Box 396
Rupert, Idaho 83350

Phone Number: (208) 436-4717

**C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH
YOU ARE RESPONDING**

Name: Reid S. Stuart

Address: Stuart Ranches
Malta, Idaho 83342

D. I am responding to the objections to the following elements.
(Please check the appropriate box(es).)

1. ☐ Name and Address
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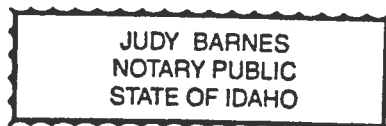
Roger D. Ling, duly sworn, upon oath, deposes and says:
(Name of person filing response)

That I am the party/claimant filing this response as defined by I.C. §42-1401A(1) and (6), or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and that the statements are true to the best of my knowledge and belief.

(Signature of person filing response)

[Signature]
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: March 13, 2002.



[Signature]
Notary Public for Idaho
Residing at: Rupert, Idaho
My Commission expires: 02/12/2005

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Almo, Idaho 83312

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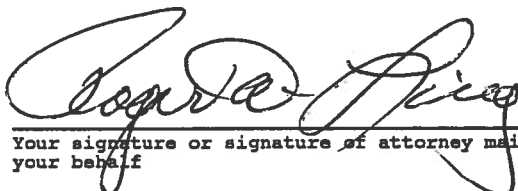
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Address: Stuart Ranches
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State of Idaho
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550 West Fort Street, Box 033
Boise, Idaho 83724


Your signature or signature of attorney mailing on
your behalf

RECEIVED

MAR 14 2002

Department of Water Resources
RECEIVED

MAR 21 2002

Department of Water Resources
Southern Region

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Ling & Robinson

Address: P. O. Box 396
Rupert, Idaho 83350

Phone Number: (208) 436-4717

**C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH
YOU ARE RESPONDING**

Name: Nolan K. Branch

Address: 1823 South 2330 East
Malta, Idaho 83342

D. I am responding to the objections to the following elements.
(Please check the appropriate box(es).)

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- 2. ☐ Source
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Subscribed and sworn to before me on: March 13, 2002.

JUDY BARNES
NOTARY PUBLIC
STATE OF IDAHO

Judy Barnes
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