

MEMO

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.

ASSISTED BY:

ROSTER OF ATTENDANCE

[illegible]