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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.

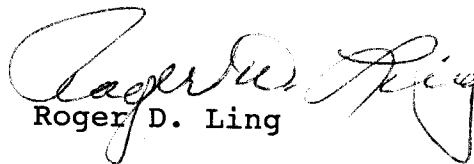
Since these events, I have been retained by William D. Jones and Rod Jones to review this water right and operation. From my investigation, it appears clear that water under Water Right No. 43-10356 is being diverted at the point of diversion identified in the Director's Recommendation for this water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

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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

LING & ROBINSON

ATTORNEYS AT LAW

RUPERT, IDAHO 83350-0396

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Rupert, Idaho 83350
Telephone (208) 436-4717
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ISB No. 1018

Attorneys for Claimant,
William D. Jones and Son

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MAY 09 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) 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

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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

NOTE OF ISSUE

CERTIFICATE OF MAILING

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

Reid Stewart
Stewart Ranch
Malta, Idaho 83342

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

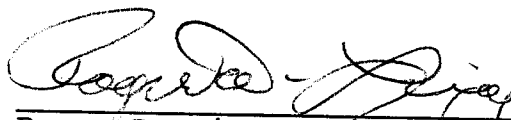
Rodney Hall
P. O. box 631
Malta, Idaho 83342

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

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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.


Roger D. Ling

NOTE OF ISSUE