



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

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.

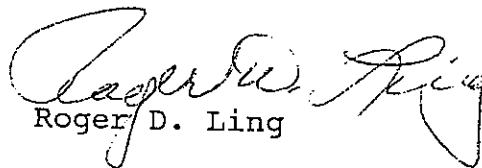
Since these events, I have been retained by William D. Jones and Rod Jones to review this water right and operation. From my investigation, it appears clear that water under Water Right No. 43-10356 is being diverted at the point of diversion identified in the Director's Recommendation for this water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