

RECEIVED

MAR 26 2012

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	)	Subcase <u>65-23481</u>
	)	(Insert water right number)
	)	
Case 39576	)	STANDARD FORM 4
	)	
	)	MOTION TO FILE:
	)	☒ LATE NOTICE OF CLAIM
	)	☐ AMENDED NOTICE OF CLAIM
_____	)	

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By filing a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

☒ I have read **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996).

My name is _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing Allen Ranch LLP

My name is Bruce M. Smith

My address is 950 West Bannock Street, Suite 520, Boise, Idaho 83702

My phone number is (208) 331-1800

MOTION TO FILE A LATE NOTICE OF CLAIM

A Motion to File a Late Notice of Claim will require a hearing before the Presiding Judge.

☒ I did not file a Notice of claim to the use of water in the SRBA because:

There was a confusion as to the filing of stockwater & irrigation claims from the Payette adjudication in the SRBA. This late claim corrects points of diversion that were misidentified in IDWR records and clarifies the name of the water bodies. It also establishes a period of use that has been in place for decades.

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

☒ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of your Notice of Claim.)

See attached map from IDWR; May 24, 2001, letter from IDWR, and a copy of the Allen v. Withers Decree.

I have attached:

- ☒ A fully completed Notice of Claim (available from IDWR).
- ☒ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ 153.
- ☒ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ 133.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on Tuesday, June 19, 2012 at 1:30 p.m.

(Insert Date and Time)

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A Motion to File an Amended Notice of Claim may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

- ☐ I must amend my Notice of Claim to the use of water in the SRBA because:

- ☐ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

I have attached:

- ☐ An amended Notice of Claim (available from IDWR).
- ☐ Payment of the following additional fees required by IDWR:

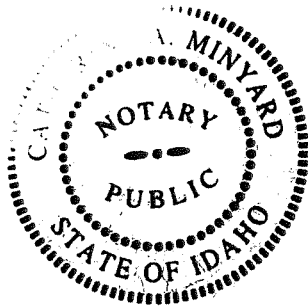
VERIFICATION (Must be completed)

State of Idaho

County of Ada

Bruce M. Smith, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.



Signature of person filing motion

[Signature]
Attorney signing in representative capacity

Subscribed and sworn to before me on March 22, 2012.
(Insert Date)

Catherine A. Minyard
Notary Public for Idaho
Residing at: Nampa
My Commission expires: 04/15/2016

INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF MAILING

I certify that on March 21, 2012, ~~199-----~~, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

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. 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

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.

(Insert Names/address of parties)

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a horizontal line and a long, sweeping tail.

Signature of person or attorney mailing the form

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 65-23481
Date Received: 2/14/2012
Receipt No:
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

ALLEN RANCH LLP Phone: (208) 866-4370
2624 S INGLENOOK PL
MERIDIAN ID USA 83642

2. Date of Priority: 06/01/1894

3. Source: ROCK CREEK Trib. to: PAYETTE RIVER NORTH FORK
LITTLE ROCK CREEK Trib. To: PAYETTE RIVER NORTH FORK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
13N	03E	3	NW SW	VALLEY	
13N	03E	3	SW NE	VALLEY	Beginning Point
13N	03E	3	NE NE	VALLEY	Ending Point
13N	03E	3	SE NE	VALLEY	

5. Description of diverting works:

EXISTING UPPER DIVERSION DAM IN ROCK CREEK AND GRAVITY FLOW DITCH (AKA LITTLE ROCK CREEK) FOR IRRIGATION AND STOCKWATER. INSTREAM STOCKWATER YEAR ROUND FOR LITTLE ROCK CREEK. LOWER DIVERSION POINT FROM ROCK CREEK FOR IRRIGATION AND STOCKWATER.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	10/16	11/30	2.7	

IRRIGATION	03/15	04/14	2.7
STOCKWATER	05/15	11/30	0.14
STOCKWATER	01/01	12/31	0.14

7. Total Quantity Appropriated is:
2.7 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
13N	03E	3	NE	NE	IRRIGATION	23
			NW	NE	IRRIGATION	21
			SW	NE	IRRIGATION	8
			SE	NE	IRRIGATION	31
			NE	NE	STOCKWATER	
			NW	NE	STOCKWATER	
			SW	NE	STOCKWATER	
			SE	NE	STOCKWATER	
					Section Acres	83
					Total Acres	83

11. Place of use in counties: VALLEY

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

13. Other Water Rights Used:

14. Remarks:

Stockwater use is for 600 head cattle.

15. Basis of Claim: Beneficial Use

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin

Adjudication." (b.) I/We do _____ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 3

For Organizations:

I do solemnly swear or affirm that I am _____ of
Title

_____, that I have signed the foregoing

Organization

document in the space below as Attorney for of

Allen Ranch LLP Title

and that the statements contained in the

Organization

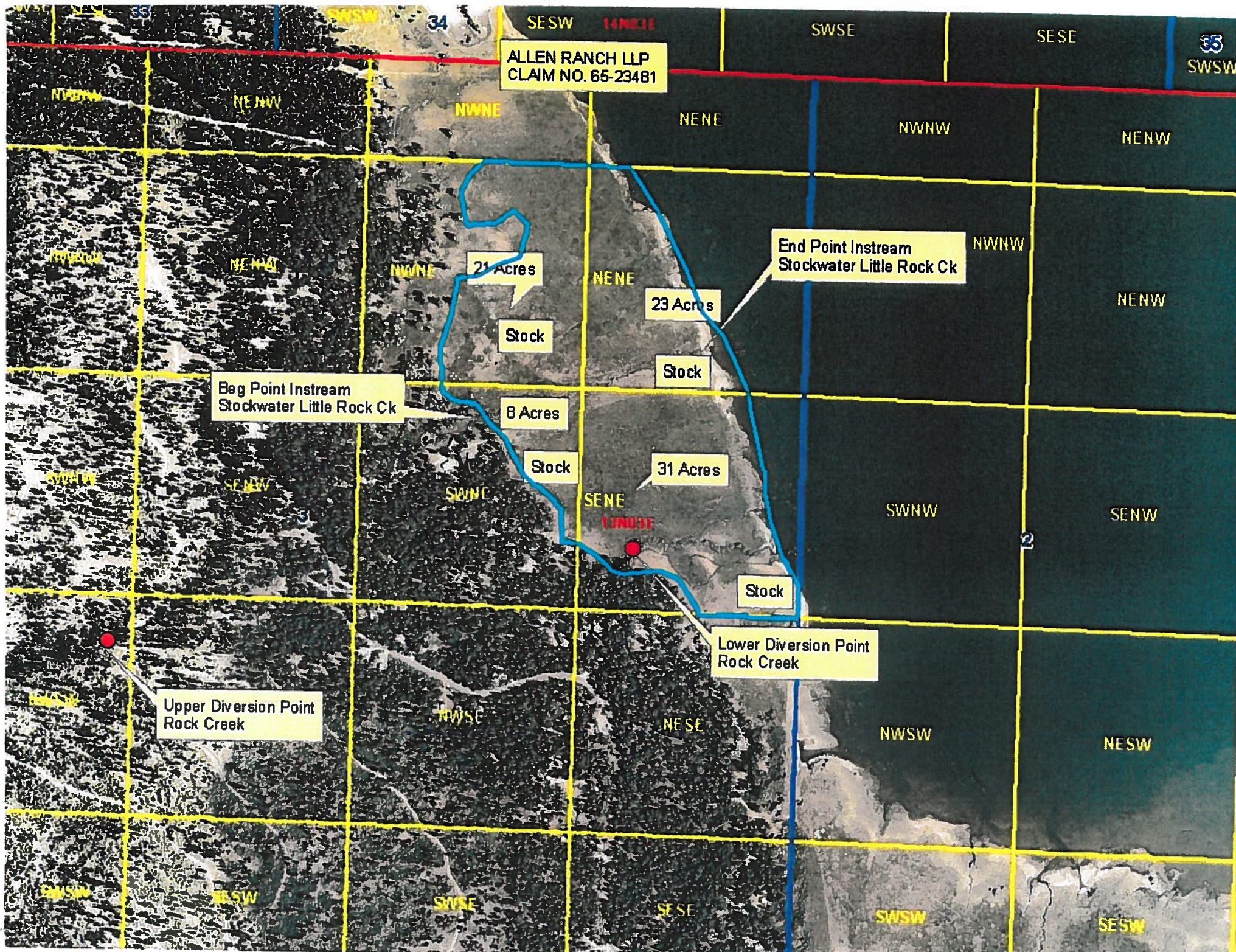
foregoing document are true and correct.

Signature of [Signature] Authorized Agent

Title and Organization

3/22/12

Date



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

MARY R. ALLEN)
D. K. ALLEN)
Plaintiffs)
-vs-)
W. N. WITHERS)
MAUD WITHERS)
Defendants)

D E C R E E

FINDINGS and CONCLUSIONS

of

COMMISSIONER of RECLAMATION

Re: DISTRIBUTION AND USE OF WATER
UNDER DECREE OF DECEMBER TWENTY EIGHT

The complaint of Defendant WITHERS in the above entitled action with reference to the distribution and use of water under the decree: After examination on the ground and from the testimony of the plaintiff and the defendant in the above entitled action, together with that of other parties having knowledge of the facts, this department has arrived at the following findings-of-fact and conclusions as to the rights, duties, and obligations of the respective parties, to-wit:

1. That the State Commissioner of Reclamation of the State of Idaho is the public official having jurisdiction over the distribution and diversion of the water under and pursuant to the terms of the decree herein;

7-15-32

2. That inasmuch as at the present time there are only about 40 inches of water in ROCK CREEK at Plaintiff ALLEN's upper diversion, whereas he has a prior decree for 100 inches, Defendant WITHERS has no right nor interest in or to the natural flow of ROCK CREEK at this time;
3. That LITTLE ROCK CREEK is not a tributary of ROCK CREEK and that Defendant WITHERS has a prior right under the decree to divert and use all of the water of LITTLE ROCK CREEK up to the amount of his decree, to-wit: 30 minor's inches;
4. That Plaintiff ALLEN has no right to divert and transfer water decreed to him for use upon a specific tract of land to other lands without securing a permit for such transfer from this department, which permit can be secured only by due process of law, with a showing that such diversion would not damage another appropriator;
5. That in this instance the diversion of water from the specific tract of land to which it was decreed to Plaintiff ALLEN for use upon other land would be a damage to Defendant WITHERS for the reason that in regular course and incident to the irrigation of such land said WITHERS now receives the benefit of the use of the return flow, seepage, and percolating waters from the irrigation of the land to which it was decreed, of which use he would be deprived by such change of place of use;

7-15-32

"A change of place of use of the water will not be permitted where to do so would damage another appropriator." Hall -vs- Blackman (22 Idaho 556)

6. That one WESLEY HARTLEY, who has attempted to divert, and in fact has actually diverted, water from LITTLE ROCK CREEK to irrigate what is known as the WORTHINGTON lands, was not, nor was his predecessor-in-interest, a party to the above entitled action, and the records of this office do not disclose that he has any right, title or interest in and to the waters of LITTLE ROCK CREEK or to any of the stream mentioned in the decree, so it would seem that by his action he is liable to prosecution for unlawful diversion of water and would be liable in damages to any one injured by his acts, but that is a matter outside of the jurisdiction of this department.

It is assumed that both the plaintiff and the defendant in the above entitled action have copies of the decree in their possession and are familiar with the terms and conditions and requirements thereof, but at this time this department desires to call special attention to the following provisions of the decree:

"IV.

That each of the parties hereto, their agents, servants, employees, successors, and all persons acting in their behalf, or on behalf of either of them, be perpetually enjoined from in any manner interfering with the rights of the other parties hereto to the use of said waters, and in any manner interfering with the ditches, canals, laterals, or other means of diversion or distribution of said waters;

V.

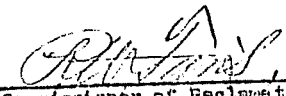
That a miner's inch of water, as herein mentioned, is equivalent to a full 1/50 cubic foot of water per second.

VI.

That the parties to whom rights are herein allotted and their successors-in-interest shall, at their own cost and expense, install and maintain suitable and efficient headgates, controlling works, and measuring devices at their respective points of diversion from the streams from which water is diverted by them, and all waters herein allotted and decreed shall be measured at said points of diversion; said works and devices shall be built, installed and maintained in accordance with plans and specifications to be approved by the official charged by law with the duty of supervising the distribution of water; all such devices shall be of such design as to accurately measure the water diverted; all such headgates, control works, measuring devices and gauges shall, at all times, be subject to inspection by any party hereto and by the public officials or watermasters having jurisdiction over the distribution and diversion of the waters, and no dam or other obstruction to the natural flow of either of the streams from which water is taken shall be maintained so as to divert water from the channel thereof except through ditches, canals or other works provided with such headgates, control works, and measuring devices; each of the parties hereto is hereby perpetually enjoined from diverting from the channel of either of said streams any water to any ditch, conduit or other device not provided with such headgates, control works and measuring devices."

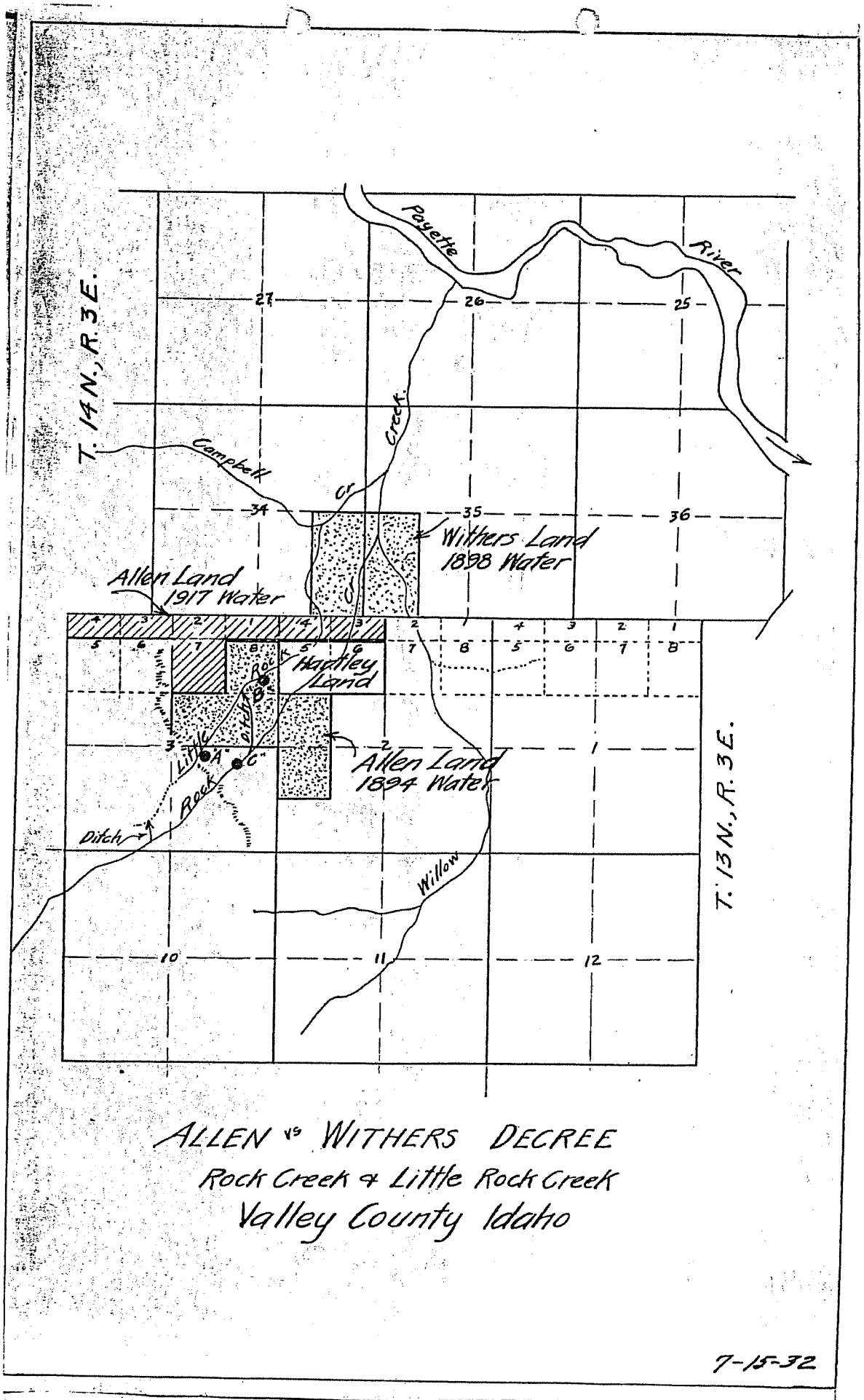
Under and pursuant to the terms and conditions of the decree and of Section 5617, Idaho Compiled Statutes, as amended by Chapter 19 (Senate Bill No. 21), Session Laws of 1927, all parties-in-interest are hereby advised and notified to provide suitable headgates, control works, measuring devices, and gauges; failing in which, action will be taken by this department pursuant to the terms of the above section of the law.

Dated, this 25th day of May, 1931


Commissioner of Reclamation

To: D. K. ALLEN
cc: W. N. WITHERS

7-15-32



ALLEN vs WITHERS DECREE
Rock Creek & Little Rock Creek
Valley County Idaho



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

May 4, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Dear Basin 65 water user,

This letter is to inform you that you may be eligible to file a stockwater claim with the Idaho Department of Water Resources (IDWR) in connection with the Snake River Basin Adjudication (SRBA). IDWR is sending this letter to water users in Basin 65 who might have relied upon the non-irrigation season stockwater provision in the Payette Adjudication. This provision states:

"When stockwater is not a specifically mentioned use for a right that includes irrigation, a reasonable flow is implied and included for the watering of livestock during the non-irrigation season."

In another basin, the Idaho Supreme Court struck down general provisions that contained similar language. The non-irrigation season stockwater language quoted above was not included in the General Provisions for Basin 65 because of the Idaho Supreme Court's ruling.

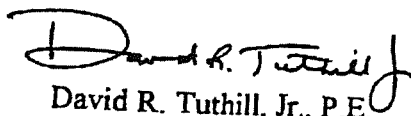
IDWR recognizes that in reliance on the non-irrigation season stockwater language in the Payette Adjudication, water users might not have filed stockwater claims in the SRBA to cover the non-irrigation season period. Individuals who historically watered livestock during the non-irrigation season without a separate stockwater claim might desire to file a new stockwater claim with IDWR.

To be eligible for a new non-irrigation season stockwater claim:

- 1 You must have actually and historically watered livestock during the non-irrigation season without a separate stockwater right.
- 2 You must have filed a surface water irrigation claim in both the Payette Adjudication and the SRBA.
- 3 You must not have filed a stockwater claim with the surface water irrigation claim.

If you meet these three requirements, you may file a Notice of Claim form for stockwater with IDWR. **To have a timely filing you must file this claim with IDWR by May 25, 2001.** IDWR will waive filing fees for these stockwater claims if filed before this deadline. Failure to file your claim in a timely manner may prevent you from claiming it in the future. Notice of Claim forms are available on IDWR's website at www.idwr.state.id.us/info/water/srba/forms.htm or from any IDWR office. Claimants can call IDWR, Western Region at (208) 334-2190 to make an appointment if they need assistance filling out a Notice of Claim form.

Sincerely,


David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief