

Copy

In the District Court of the Fifth Judicial District of the
State of Idaho, in and for the County of Twin Falls

RE: SRBA Case No. 39576

Subcase 65-23481
Response Objecting Late Notice of Claim

Name and Address of Person Objecting;

Sandra M Chess
1200 Lizaso Ave
Boise, ID 83709
(208) 863-8769

At the time of this filing, there were already two protested applications pending hearing with IDWR, of similar content, (Transfer App 77121 and Application for Permit 65-23451). These applications were withdrawn May 2, 2012 prior to the scheduled hearing dates of May 8th and 9th, 2012, but after the applicant, the applicant's attorney and IDWR were in receipt of exhibits and evidence submitted by protesting parties. On May 9, 2012, one week after the withdrawal of these applications, a new filing was initiated with IDWR under water right 65-23493 by the same applicant. The new application has not been filed in the public notices as of the date of this objection; however the date it was initiated is relevant and shows intent to cause unnecessary delay and/or needlessly increase the cost of litigation.

I am objecting to the following elements of the Late Notice of Claim, subcase 65-23481, submitted by Bruce Smith on behalf of Allen Ranch LLP;

1. The "upper" point of diversion from Rock Creek into Little Rock Creek located in Township 13N, Range 3E, Section 3, NWSW ¼ ¼. Diversion of Rock Creek at this point will injure other water rights.
2. The amount of water requested for irrigation of 2.70 CFS for 83 acres. The total combined diversion of Rock Creek and Little Rock Creek, for irrigation purposes, should be no more than 1.66 CFS (.02 CFS per irrigated acre). The place of use for this claim is in Cascade, Idaho, there is no reason for early or late season irrigation in this area due to weather conditions.
3. Diversion of water from Rock Creek or Little Rock Creek without suitable headgates, control works and measuring devices.
4. Diversion of Rock Creek or Little Rock Creek for the purpose of stockwater. The waters of both creeks naturally flow into and through the same pasture at this place of use, both are accessible for instream stockwater.

5th K
CERTIFICATE OF MAILING

I certify that on June 4, 2012, 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;

Andrea M. Cass

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-27007

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-2707

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

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

Bruce Smith Atty
Moore Smith Buxton & Turcke Chtd
950 W Bannock St, Ste 520
Boise, ID 83702

Allen Ranch LLP
JR Allen
2624 S Inglenook Pl
Meridian, ID 83642

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

950 WEST BANNOCK, SUITE 520
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202**FACSIMILE COVER SHEET**

DATE: March 15, 2011 RECIPIENT'S FAX: 334-2348
TO: Mr. John Westra CLIENT: 1752-00
IDWR
RE: Application for Transfer - Allen Ranch LLP WR# 65-3111X
FROM: Bruce M. Smith/Cathy

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 12

☐ ORIGINAL WILL NOT BE SENT
☒ ORIGINAL WILL BE SENT BY FIRST CLASS MAIL
☐ ORIGINAL WILL BE SENT BY FEDERAL EXPRESS

ADDITIONAL COMMENTS:

Please find enclosed the application for transfer being filed on behalf of Allen Ranch
LLP for water right 65-3111X. The original application is being mailed to you in today's
mail. Please call me at 331-1800 if you have any questions. Thank you.

Sincerely,

Cathy Minyard
Legal Assistant to Bruce M. Smith

***** IMPORTANT MESSAGE *****

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL
INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL NAMED ABOVE. IF THE READER OF THIS
MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE
INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS
COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE
IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA
THE U.S. POSTAL SERVICE. THANK YOU.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part ☒ ☐	65-3111X	2.70 cfs	Irrigation	4/15 to 10/15	unnamed stream / North Fork
☐ ☐				to	of Payette River
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 2.70 cfs and/or _____ ac-ft

2. Total amount of water proposed to be transferred or changed 2.70 cubic feet per second and/or _____ acre-feet per annum.

3. Point(s) of Diversion:

- ☐ No changes to point(s) of diversion are proposed-the following chart is therefore not completed. (Proceed to #4.)
- ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it Attachment #5.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
			SE	NE	3	13N	3E	VALLEY	UNNAMED STREAM	LOWER ALLEN
			NW	SW	3	13N	3E	VALLEY	UNNAMED STREAM	UPPER ALLEN

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☒ No changes to place of use are proposed-the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres (for irrigation use) _____

Page 1

02/23/2011

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 65-3111X

WATER RIGHT NUMBER: 65-3111X

Part 2 A

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	E K ALLEN RANCH LTD PARTNERSHIP PO BOX 474 CASCADE, ID 83611 (208)382-4122

Priority Date: 06/01/1894

Basis: Decreed

Status: Active

Source

UNNAMED STREAM

Tributary

NORTH FORK PAYETTE RIVER

Beneficial Use

IRRIGATION

From To

4/15 to 10/15

Diversion Rate

2.700 CFS

Annual VolumeTotal Diversion:

2.700 CFS

Location of Point(s) of Diversion

UNNAMED STREAM

VALLEY County

NW1/4SE1/4

Sec. 3, Twp 13N, Rge 03E, B.M.

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	
13N	03E	3	23.0	21.0	8.0	31.0													83.0
			L 8	L 7															

Total Acres: 83

Conditions of Approval:

1. SOURCE IS ALSO KNOWN AS RICHARD CREEK.
SOURCE IS ALSO KNOWN AS ROCK CREEK.
2. 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.
3. THIS RIGHT SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE WHEN MEASURED AT FIELD HEADGATE.

Dates and Other Information:

Decreed Date: 10/31/2000

Water District Number: 65

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

☐ If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. Label it Attachment #7b. If the place of use currently consists of a permissible place of use, then the attachment is not required if the application contains a clear statement that the boundaries for the place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly stated.

☐ If you propose to change the nature of use or period of use of all or part of the right(s) listed in this application, attach documentation describing the extent of historic beneficial use of the portion of the right(s) proposed to be changed. Also attach documentation showing that the portion of the right(s) to be changed will not be enlarged in rate, volume, or consumptive use through the proposed change. Label if Attachment #8a.

☐ If you propose to change the place of use of a supplemental irrigation right, answer below and attach supporting documentation. Label it Attachment #8b.

1. Describe how the supplemental water rights have been used historically in conjunction with other water rights at the existing place of use. Describe the time during the irrigation season that the supplemental rights have been used. Include information about the availability or reliability of the primary right(s) being supplemented, both before and after the change. If the applicant is proposing to change a supplemental irrigation right to a primary right, provide the information required on Part 3B above.:

Transfer contains _____ pages and _____ attachments.

Received by _____ Date _____ Prelim. Check by _____ Date _____

Fee Paid	Date	Received by	Receipt #
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Add'l Fee Paid	Date	Received by	Receipt #
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State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
GARY SPACKMAN, Interim Director

March 28, 2011

J R ALLEN
ALLEN RANCH LLLP
3166 CENTENNIAL AVE
BOISE ID 83706

Re: Application for Transfer No. 77121, Water Right No. 65-3111X

Dear Mr. Allen:

Thank you for your March 24, 2011 office visit responding to my March 23 letter about your upper point of diversion identified on public land. After your visit, other department staff recalled that perhaps this diversion is on private land, not public land. * *

* * Today I completed additional research in that regard. According to the U.S. Forest Service map, the diversion is not on public land. Also, the county tax lot information states the land is owned by West Mountain Properties LLC, 5086 Debron CT, Pollock Pines CA 95726.

* * There is no need to contact the Forest Service for additional information. Please disregard my earlier letter about public land. Instead, please use the enclosed copy of page 3 of your application to provide an answer about access to the upper diversion located on private land. Alternately, you can visit this office again to amend your application.

As noted in my prior letter, either you or your attorney can complete this item to properly amend your application so that it can be processed. Please contact me at 334-2190 if you have any questions. Thank you for your attention to this matter.

Sincerely,

Steve Lester
Water Rights Supervisor

Enclosure

Cc: Bruce Smith

Completed 3/29/11

RECEIVED

APR 18 2011

WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Ident. No.

65-23451

1. Name of applicant(s) Allen Ranch LLP Phone 866-4370
 Name connector (check one): ☐ and ☐ or ☐ and/or
 Mailing address: 3166 Centennial Ave * City Boise
 State ID Zip 83706 Email: _____
2. Source of water supply unnamed stream which is a tributary of North Fork of Payette River
3. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #
13N	03E	03			NW	SW	VALLEY	UNNAMED STREAM	UPPER ALLEN
13N	03E	03			SE	NE	VALLEY	UNNAMED STREAM	LOWER ALLEN

4. Water will be used for the following purposes:

- Amount 2.7 for Irrigation purposes from 04/01 to 04/14 (both dates inclusive)
 (cfs or acre-feet per year)
- Amount 2.7 for Irrigation purposes from 10/16 to 12/01 (both dates inclusive)
 (cfs or acre-feet per year)
- Amount .14 for Stockwater purposes from 1/1 to 12/31 (both dates inclusive)
 (cfs or acre-feet per year)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)

5. Total quantity to be appropriated is (a) 2.7 cubic feet per second (cfs) and/or (b) _____ acre-feet per year (af).

6. Proposed diverting works:

- a. Describe type and size of devices used to divert water from the source. existing diversion dam and gravity flow ditches
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 11.
 For dams 10 feet or more in height OR reservoirs with a total storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☒ No
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
- d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☒ No
- e. If well is already drilled, when? _____; drilling firm _____;
 Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Description of proposed uses (if irrigation only, go to item 8):

- a. Hydropower; show total feet of head and proposed capacity in kW. _____
- b. Stockwatering; list number and kind of livestock. 600 cattle
- c. Municipal; show name of municipality or the applicant's qualifications as a municipal provider. _____
- d. Domestic; show number of households _____
- e. Other; describe fully. _____

* SEE ATTACHMENT FOR NEW ADDRESS 8/4/11

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR)	
PERMIT NO. 65-23451 IN THE NAME OF)	
ALLEN RANCH LLP AND APPLICATION)	
FOR TRANSFER NO. 77121 IN THE)	ORDER CANCELLING
NAME OF ALLEN RANCH LLP)	HEARING

FACTUAL AND PROCEDURAL HISTORY

1. This order addresses contested cases for the following two applications ("the applications"):
 - a. On March 16, 2011, Allen Ranch, LLP, ("Allen") applied to the Department of Water Resources ("Department") to transfer the point of diversion of Water Right No. 65-3111X. The Department designated the transfer application as Application No. 77121.
 - b. On April 18, 2011, Allen applied to the Department to appropriate 2.70 cfs of water from the same unnamed tributary of the North Fork of the Payette River that is the source of water for Right No. 65-3111X. The Department designated the application as Application No. 65-23451.
2. The Department scheduled a hearing to consider Allen's two applications on May 8 and 9, 2012.
3. On February 24, 2012, the Department's hearing officer denied Allen's request to postpone the scheduled hearing.
4. On April 23, 2012, the Department's hearing officer denied Allen's second request to postpone the scheduled hearing.
5. On May 2, 2012, the Department received Allen's notices withdrawing the applications.

CONCLUSIONS OF LAW

Because Allen withdrew the applications, the Department should cancel the scheduled hearing .

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2012, I mailed a true and correct copy, postage prepaid, of the foregoing ORDER CANCELLING HEARING to the person(s) listed below:

RE: Transfer No.: 77121- Allen Ranch LLP
Application for Permit No: 65-23451- Allen Ranch LLP

✕ MAUREEN K WEBER
4603 S 5 MILE RD
BOISE, ID 83709

✕ WADE ZURCHER
2625 N CROFT LN
EAGLE, ID 83616

✕ DWIGHT JIVIDEN
413 CABARTON RD
CASCADE, ID 83611

✕ CINDI BETHEL CARMONA
10421 W CAMPVILLE ST
BOISE, ID 83709

✕ LAWRENCE J CHESS
1200 LIZASO AVE
BOISE, ID 83709

✕ LAWRENCE RIDENOUR
3136 TATTENHAM AVE
BOISE, ID 83713

✕ SANDRA M CHESS
1200 LIZASO AVE
BOISE, ID 83709

✕ TERRY MC CLINTICK
PO BOX 18
ORVADA, NV 89425

✕ JAMES T BUNCE
PO BOX 890
CASCADE, ID 83611-0890

✕ RANDY MC CLINTICK
PO BOX 7
ORVADA, NV 89425

✕ MELVIN PURSEL
C/O SANDRA CHESS OR JIM BUNCE
1077 WASHINGTON ST
RENO, NV 89503

✕ CRIS A MC CLINTICK
PO BOX 7
ORVADA, NV 89425

✕ NADEAN PERKINS
700 STEEPVIEW
EAGLE, ID 83616

✕ GAFFNEY PROPERTIES, A PARTNERSHIP
C/O D BLAIR CLARK, ATTORNEY
1513 TYRELL LN STE 130
BOISE, ID 83706

✕ GERALD DYE
3 LIGE LN
CASCADE, ID 83611

✕ IRVIN R SHAW
2579 DESTINY AVE
KUNA, ID 83634

✕ GLENN FORD
569 BRENDA LN
CASCADE, ID 83611

ALLEN RANCH LLP
C/O JR ALLEN
2624 S INGLEBROOK PL
MERIDIAN, ID 83642

RECEIVED

AUG 30 2011

WATER RESOURCES
WESTERN REGION

August 29, 2011

State of Idaho
Department of Water Resources
2735 Airport way
Boise, ID 83705-5082

RE: Application for Permit # 65-23451
and Application for Transfer # 77121

In the referenced Application for Permit, above the applicant signature, the language in the permit states "I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval"

Paragraph 10 c. of the application states that "Access per verbal agreement with Dwight Jividen, Registered Agent."

I hereby unequivocally declare that I have not given any permission or made any agreement to applicant or Mr. Allen, verbal or otherwise, to access the applied for point of diversion.

Therefore, according to the language over the signature of the applicant, I request that this application be rejected.

Please note that there exist other reasons why this application should be denied, and if the application is not rejected immediately, I will pursue those avenues.

Thank you for your prompt attention to this matter.

Dwight Jividen
West Mountain Properties LLC
413 Cabarton Road
Cascade, ID 83611
djividen@frontiernet.net
208-382-0011
208-315-3034



UNNAMED STREAM End of Stream Flow	NENE	Sec. 03	Township 13N	Range 03E	VALLEY County
UNNAMED STREAM Beginning of Stream Flow	SWNE	Sec. 03	Township 13N	Range 03E	VALLEY County
ROCK CREEK	SENE	Sec. 03	Township 13N	Range 03E	VALLEY County
ROCK CREEK	NWSW	Sec. 03	Township 13N	Range 03E	VALLEY County

STOCKWATER Use:
Number of stock: 600

STOCKWATER Use:
Number of stock: 600

Place(s) of use:

Place of Use Legal Description: IRRIGATION VALLEY County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
13N	03E	3		NENE	23		NWNE	21		SWNE	8		SENE	31

Place of Use Legal Description: IRRIGATION VALLEY County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
13N	03E	3		NENE	23		NWNE	21		SWNE	8		SENE	31

Place of Use Legal Description: STOCKWATER VALLEY County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
13N	03E	3		NENE			NWNE			SWNE			SENE	

Place of Use Legal Description: STOCKWATER VALLEY County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
13N	03E	3		NENE			NWNE			SWNE			SENE	

Total Acres: 166

should be 83

Eth 3 2 of 3

Dates:

Date Application Received: 05/09/2012 ✓

Date Application Denied:

Last Date of Beneficial Use:

Extension End Date:

Protest Deadline Date:

Number of Protests: 0

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Other Information:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Application Type: New Appropriation

Applicant Remarks:

Other Water Rights:

Time to Complete Works: 1

Transfer Affected Description:

Transfer Affected Contracts:

Old Transfer Number:

Transfer Reason:

Transfer Return Flows:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

DH2
2013
113
AREA
MAP
1961

CLAIM 65-07111 X INIT RAL
T. R. S. 6/0
P/D 13N SE 3 NWSE
SCALE 0" = 1 MILE
PHOTO ID. 113 DATE 1961

