

Objections to Hearing of Motion to File Late Notice

Claim No. 65-23481

Case 39576

Jim Bunce

Water Master

Member of the Board

West Mountain Water Association, Inc.

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
MAY 22 2012
By _____
_____ Clerk
_____ Deputy Clerk

May 7, 2012

Judge Wildman

District Court

SRBA Fifth Judicial

District County of

Twin Falls, Idaho 83301

Honorable Judge Wildman,

I am sending the enclosed information to you because I am sure you **will not** receive all of it from the IDWR.

You should know that the IDWR has had only **one** recorded Water Right and **one** Point of Diversion for over 50 years, Right No. 65-3111X at P.O.D. 1/4 -1/4 NW-SE, elevation 4880 feet, for the Allen Ranch.

I purchased Lot # 55 of Allen's 4th subdivision in May of 1958 from D.K. Allen, J.R.'s granddad.

The ditch from the P.O.D. 65-3111X to the Allen Ranch ran across my lot #55, using his POD from before 1958 through 2004 or 2005, **until** J.R. Allen, Allen Ranch, abandoned it about 2004 or 2005. This was the **only authorized POD** from Rock Creek to the Allen Ranch. Many people will be witness to the above.

Judge Wildman

Objection of Hearing Motion to Late File Late Notice

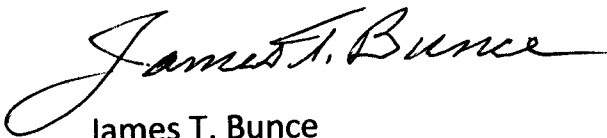
Claim No. 65-23481

Page 2 of 2

For **Claim No. 65-23481, a new Water Right**, with the IDWR, so you would find **NO other** documents in that file. The IDWR did not notify any of the Protestants, seventeen, that would be interested parties. Their failure to notify all other water users and Protestants was deceitful and prejudicial. Allen's stockwater claim is for **600** head of cattle, on **83 acres** of land, and the Annual Operating Instructions, AOI, provide for 210 head of cattle on the Allen Ranch for the year of 2011.

I do hope that the enclosed information will help you make an informed and fair decision on June 19, 2012

Respectfully,



James T. Bunce

Water Master, West Mountain Water Association, Inc.

Email ibcascade@hotmail.com

Cell # 208-315-1628

Home # 208-382-4288

CC: D.B. Clark Law Office

**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)
NAME OF ALLEN RANCH LLP)**

**ORDER DENYING PETITION
TO POSTPONE HEARINGS**

FINDINGS OF FACT

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 source of water for Right No. 65-3111X is an unnamed tributary of the North Fork of the Payette River. The Department designated the transfer application as Application No. 77121 ("Allen transfer").
 - 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. Allen proposes to use water for irrigation and stockwater purposes. The Department designated the application as Application No. 65-23451.
2. J.R. Allen is general partner in Allen Ranch, LLP.
3. On April 27, 2011, West Mountain Water Association, Inc., ("West Mountain") applied to the Department of Water Resources ("Department") to transfer the point of diversion and place of use for Water Right Nos. 65-3111A and 65-13088. The source of water for Right Nos. 65-3111A and 65-13088 is the same stream source for Right No. 65-3111X and Application No. 65-23451. The Department designated the transfer application as Application No. 77209 ("West Mountain transfer" or "West Mountain application").
4. On June 16, 2011, Glenn Ford and Joyce Ford ("Fords") applied to the Department to appropriate 0.04 cfs of water from the same stream that is the source of water for Right Nos. 65-3111X, 65-3111A, and 65-13088, and for Application No. 65-23451. Fords propose to use water for aesthetic purposes. The Department designated the application as Application No. 65-23457 ("Ford application").

5. The stream source for Right Nos. 65-3111X, 65-3111A, and 65-13088, and for Application Nos. 65-23451 and 65-23457 is variously referred to as Rock Creek, Richard Creek, or unnamed stream.
6. In conformance with the requirements of Idaho Code §§ 42-203A(2) and 42-222(1), the Department caused notice of each of the applications to be published.
7. The two Allen applications were each protested by more than ten individuals or organizations. Allen and all the protestants from the Allen applications will collectively be called "the Parties" in the remainder of this order.
8. Allen protested the applications filed by West Mountain and Fords.
9. After consulting Allen's attorney, on January 18, 2012, the Department scheduled a hearing to consider Allen's two applications on May 8 and 9, 2012. The Department notified all the Parties of the hearing dates. In its notice setting the dates for the hearing, the Department also notified the Parties that they must provide copies of exhibits that may be offered at the hearing to all other Parties and to the hearing officer by April 24, 2012.
10. After consulting Allen's attorney, on January 18, 2012, the Department scheduled a hearing to consider West Mountain's application and Fords' application on July 17 and 18, 2012. The Department notified all the Parties of the hearing dates.
11. On January 20, 2012, Allen's attorney notified the Department that J.R. Allen would not be available for the May 8 and 9, 2012, hearing, and he requested that the hearing be rescheduled.
12. On February 8, 2012, in response to the Department's request for clarification of the rescheduling request, Allen's attorney notified the Department that J.R. Allen "will be out of town and out of the country from May through July." The response provided no further explanation.
13. On February 24, 2012, the Department's hearing officer denied Allen's request to postpone the scheduled hearing.
14. On April 6, 2012, Allen again requested postponement of the hearing because J.R. Allen will be out of the country on the hearing dates. Allen proposed combining the hearing with the hearings scheduled for the applications filed by West Mountain and Fords. The hearings for West Mountain and Fords are scheduled for July 17 and 18, 2012. Allen asserts that two days should be sufficient time to hear testimony in connection with both Allen applications and the West Mountain and Ford applications.
15. The Department sought comment from the Parties on Allen's request. Comments were due by April 20, 2012. The Department received comments from seven Parties. Six opposed postponing the hearing and one suggested conditions for

postponing the hearing. The reasons most commonly expressed by the Parties for opposing postponement of the hearing are:

- a. Two days would be insufficient time to hear four applications.
- b. Work schedule conflicts.

CONCLUSIONS OF LAW

Allen did not cite a statute or rule in support of his request to postpone the hearing. The hearing officer will apply the standard in Rule 16(b) of the Idaho Rules of Civil Procedure. Rule 16(b) states, "A schedule shall not be modified except by leave of the judge or a magistrate upon a showing of good cause."

Allen proposes to postpone the hearing because J.R. Allen will be out of the country. Allen has not explained why J.R. Allen will be out of the country. Therefore, the hearing officer cannot discern whether the trip out of the country is a matter of necessity or a matter of choice.

Allen proposes that the hearing for the two Allen applications should be held in July in conjunction with the hearings for the West Mountain and Ford applications. To meet the review requirements of Idaho Code §§ 42-203A and 42-222(1) for the applications, particularly the sufficiency of water supply and injury review requirements, the Department must know and account for the quantity, timing, and location of each appropriation from the same water source. This is especially true on a small stream such as the one that is the source for the water rights and proposed water rights in the four applications. The hearing for Allen's applications was scheduled before the West Mountain and Ford applications because the Allen applications were filed first. If the Allen applications are not considered before the West Mountain and Ford applications, then a complete understanding of the prior appropriations from the source stream will not be available when the West Mountain and Ford applications are reviewed, and the Department would risk making an incorrect determination of the water supply and the potential for injury in the West Mountain and Ford cases.

Hearing all four applications at once, as proposed by Allen, could potentially satisfy the need to resolve the Allen applications before considering the West Mountain and Ford applications. However, two Parties have expressed concern that two days may not be long enough to hear testimony for four applications. The hearing officer shares this concern, especially with so many Parties involved. In addition, it is likely that it would take the hearing officer longer to prepare decisions for four applications after the July hearing dates than it would for only two. The delay would injure West Mountain and Fords.

In addition to the harm that could be done to West Mountain and Fords by delaying the hearings, the hearing officer must also consider the number of Parties involved. With so many Parties involved in the Allen applications, it is extremely difficult to find hearing dates that are convenient for everyone. In their comments on the Allen request, five

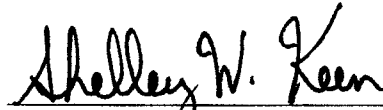
Parties expressed that the proposed change from May to July would severely inconvenience them.

In summary, Allen has not shown good cause why the hearing should be postponed. Allen has not provided a reason why J.R. Allen must be out of the country at the time when the hearing is scheduled. Moreover, postponing the hearing would injure West Mountain and Fords. Finally, postponing the hearing would severely inconvenience a number of other Parties to the proceeding.

ORDER

1. Allen's petition to delay the hearings for the applications is **DENIED**.
2. The deadline for submitting copies of exhibits that may be offered at the hearing is extended to April 30, 2012.

Dated this 23rd day of April, 2012.



Shelley W. Keen
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2012, I mailed a true and correct copy, postage prepaid, of the foregoing ORDER DENYING PETITION TO POSTPONE HEARINGS to the person(s) listed below:

RE: Transfer No.: 77121- Allen Ranch LLP
77209- West Mtn Water Assoc.
Application for Permit No: 65-23451- Allen Ranch LLP
65-23451- Glenn & Joyce Ford

7/18

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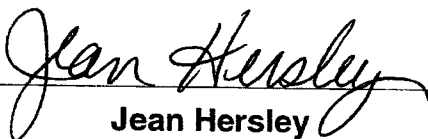
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MOORE SMITH BUXTON & TURCKE CHTD
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WEST MOUNTAIN WATER ASSN INC
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TRESSA YOUNG
312 N ORCHARD HTS WAY
NAMPA, ID 83651



Jean Hersley
Technical Records Specialist I

**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)
NAME OF ALLEN RANCH LLP)**

**ORDER CANCELLING
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.

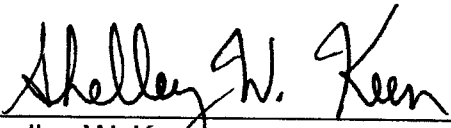
CONCLUSIONS OF LAW

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

ORDER

The hearing scheduled for May 8 and 9, 2012, in connection with Application for Permit No. 65-23451 and Application for Transfer No. 77121 is **CANCELLED**.

Dated this 3rd day of May, 2012.



Shelley W. Keen
Hearing Officer

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

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Jean Hersley
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SUSAN E. BUXTON^{*}
PAUL J. FITZER
JILL S. HOLINKA
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PAUL A. TURCKE[‡]

JOHN J. MCFADDEN *of Counsel*
MICHAEL C. MOORE[‡] *of Counsel*

^{*} Also admitted in Oregon
[‡] Also admitted in South Dakota
[™] Also admitted in Utah
[‡] Also admitted in Washington

April 30, 2012

Shelley Keen
Idaho Department of Water Resources
322 E. Front Street, Suite 648
Boise, ID 83702

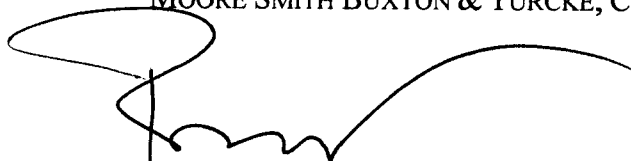
RE: Application for Transfer No. 77121

Dear Mr. Keen:

This is notice that the Applicant withdraws its Application for Transfer No. 77121.

Sincerely,

MOORE SMITH BUXTON & TURCKE, CHARTERED



Bruce M. Smith

BMS/cam
cc: Protestants

COPY

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

**IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 77121 IN THE)
NAME OF ALLEN RANCH LLLP)
_____)**

**NOTICE OF HEARING
AND PRE-HEARING ORDER**

NOTICE OF HEARING

On 3/16/2011, ALLEN RANCH LLLP filed Application for Transfer No. 77121 with the Idaho Department of Water Resources (Department). Protest(s) were filed by MAUREEN K WEBER, DWIGHT JIVIDEN, SANDRA M CHESS, LAWRENCE J CHESS, JAMES T (JIM) BUNCE, MELVIN PURSEL, NADEAN PERKINS, GERALD DYE, GLENN FORD, WADE ZURCHER, CINDI BETHEL CARMONA, LAWRENCE RIDENOUR, TERRY MC CLINTICK, RANDY MC CLINTICK, CRIS A MC CLINTICK, GAFFNEY PROPERTIES, A PARTNERSHIP, AND IRVIN R SHAW. 17

The Department has scheduled the matter for hearing on **Tuesday, May 08, and Wednesday, May 09, 2012 beginning at 9:00 AM, at IDAHO DEPARTMENT OF WATER RESOURCES - STATE OFFICE, CONFERENCE ROOMS B-D, 322 E FRONT ST BOISE, ID 83702.**

If you plan to offer exhibits for the record at the hearing, note that rule 606 of the department's Rules of Procedure requires that a copy be provided to the presiding officer.

The presiding officer at the hearing will be Shelley Keen, whose mailing address is: Idaho Department of Water Resources, Idaho Water Center, 322 E. Front St., 6th Floor, Boise, ID 83720-0098.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the Department, IDAPA 37.01.01, and Water Appropriation Rules 40 and 45. A copy of the code/rules may be obtained from the department's website, www.idwr.idaho.gov, or upon request.

All parties appearing in the matter will have the opportunity to present information, examine witnesses, and provide argument on issues related to the contested application.

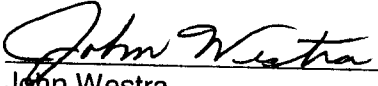
The hearing will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the conference, please notify the department at least (10) days prior to the hearing. Inquiries about scheduling, hearing facilities, etc., should be directed to Sherry Borgeman (208)334-2190.

PRE-HEARING ORDER

1. On or before April 24, 2012, each party must disclose to all other parties, in writing, the identity of all expert witnesses that will or may testify at the hearing.
2. All depositions shall be complete on or before April 24, 2012.

IT IS FURTHER ORDERED that, on or before April 24, 2012, each party seeking to offer exhibits at the hearing must physically serve (in the actual physical possession of the person being served) on all other parties and the hearing officer copies of exhibits that may be offered at the hearing. Service of the proposed exhibits will be the method of providing copies of exhibits to the parties as required by Rule 606 of the Rules of Procedure. All parties shall review the proposed exhibits prior to the hearing, and come to the hearing prepared to discuss whether each of the proposed exhibits should be admitted into evidence.

Dated this 18th day of January, 2012.



John Westra
Western Regional Manager

For: Shelley Keen
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 2012, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the following:

Document Served: **Notice of Hearing and Prehearing Order**
Hearing Procedures for Application for Transfer

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MERIDIAN, ID 83642

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JAMES T (JIM) BUNCE
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LAKE HAVASU CITY AZ 86404


Sherry Borgeman
Administrative Assistant

PRE-HEARING CONFERENCE AND/OR HEARING PROCEDURE APPLICATION FOR TRANSFER

ISSUES

Applications for transfer are filed for the purpose of changing a point of diversion, purpose of use, period of use or nature of use of all or part of a licensed, decreed or statutory water right. Section 42-222, Idaho Code, identifies the following potential issues for the department to consider in connection with an application for transfer:

1. Will the proposed transfer reduce the quantity of water under existing water rights?
2. Will the proposed transfer constitute an enlargement in use of the original right?
3. Will the proposed transfer be contrary to the conservation of water resources within the State of Idaho?
4. Will the proposed transfer conflict with the local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use and its potential effects on the public water source?
5. Will the proposed transfer adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates?
6. If the proposed transfer is for a municipal use, is it necessary to provide reasonably anticipated future needs for a municipal service area and is the planning horizon consistent with Sections 42-222 and 42-202B, Idaho Code?
7. Will the proposed transfer change the nature of use from an agricultural use, and would such a change significantly affect the agricultural base of the local area?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 5, 6, and 7 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 4, if applicable, lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONSIDERATION FOR TRANSFER 77121

ANSWERS TO ISSUES

Issue No. 1

Yes, it will reduce the water to all other water right users if the amount of water that Allen uses and how well it is controlled. It also depends on how many POD's he is permitted. See Application for Permit No. 65-23451.

Issue No. 2

Perhaps. It depends on the control of the amount Allen is permitted to divert. The IDWR has not had any control since Allen moved to elevation 5302, unauthorized POD.

Issue No. 3

It depends on the water losses in what Allen **calls** his upper division ditch. He claims losses to the IDWR.

Issue No. 4

YES. Even if his diversion is properly controlled, he will be diverting water ahead of other properties that have enjoyed the aesthetics of the water flowing by or through their property. This aesthetic value is part of the reason the property owners purchased their property. If Allen is permitted to divert the water, it **WILL** reduce the value of several properties. Remember, the Allen family first subdivided all this property and then sold it. The attitude of J.R. Allen is that he still controls the mountain.

Issue No. 5

YES, It will reduce the sale value of the properties that Rock Creek flows through or by.

CONSIDERATION FOR TRANSFER 77121

ANSWERS TO ISSUES

Page 2

Issue No. 6

No. The proposed transfer is **not** for municipal use. It is for irrigation **only**. No other use.

Issue No. 7

YES, if Allen reduces the water flow at elevation 5112, as many as 64 water users may not have the water for their yards or for fire protection. **No.** The proposed transfer is **not** for municipal use. It is for irrigation **only**. No other use.

MOORE SMITH BUXTON & TURCKE, CHARTERED

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JOHN J. McFADDEN *of Counsel*
MICHAEL C. MOORE[‡] *of Counsel*

* Also admitted in Oregon
° Also admitted in South Dakota
~ Also admitted in Utah
† Also admitted in Washington

April 30, 2012

Shelley Keen
Idaho Department of Water Resources
322 E. Front Street, Suite 648
Boise, ID 83702

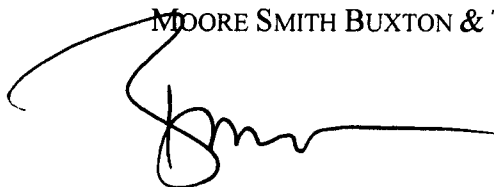
RE: Application for Permit No. 65-23451

Dear Mr. Keen:

This is notice that the Applicant withdraws its Application for Permit No. 65-23451.

Sincerely,

MOORE SMITH BUXTON & TURCKE, CHARTERED



Bruce M. Smith

BMS/cam
cc: Protestants

COPY

**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 LLLP)
_____)**

**NOTICE OF HEARING
AND PRE-HEARING ORDER**

NOTICE OF HEARING

On 4/18/2011, ALLEN RANCH LLLP, filed an Appropriation of a Water Right Permit No. 65-23451 with the Idaho Department of Water Resources (Department). Protest(s) were filed by GERALD DYE, LAWRENCE J CHESS, GLENN FORD, TRESSA YOUNG, NADEAN PERKINS, TERRY MC CLINTICK, RANDY MC CLINTICK, CRIS A MC CLINTICK, CINDI BETHEL CARMONA, SANDRA M CHESS, JAMES T (JIM) BUNCE, MELVIN PURSEL, AND IRVIN R SHAW. 13

The Department has scheduled the matter for hearing on **Tuesday, May 08, and Wednesday, May 09, 2012 beginning at 9:00 AM, at IDAHO DEPARTMENT OF WATER RESOURCES - STATE OFFICE, CONFERENCE ROOMS B-D, 322 E FRONT ST BOISE, ID 83702.**

If you plan to offer exhibits for the record at the hearing, note that rule 606 of the department's Rules of Procedure requires that a copy be provided to the presiding officer.

The presiding officer at the hearing will be Shelley Keen, whose mailing address is: Idaho Department of Water Resources, Idaho Water Center, 322 E. Front St., 6th Floor, Boise, ID 83720-0098.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the department, IDAPA 37.01.01, and Water Appropriation Rules 40 and 45. A copy of the code/rules may be obtained from the department's website, www.idwr.idaho.gov, or upon request.

All parties appearing in the matter will have the opportunity to present information, examine witnesses, and provide argument on issues related to the contested application.

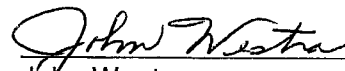
The hearing will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the conference, please notify the department at least (10) days prior to the hearing. Inquiries about scheduling, hearing facilities, etc., should be directed to Sherry Borgeman (208)334-2190.

PRE-HEARING ORDER

1. On or before April 24, 2012, each party must disclose to all other parties, in writing, the identity of all expert witnesses that will or may testify at the hearing.
2. All depositions shall be complete on or before April 24, 2012.

IT IS FURTHER ORDERED that, on or before April 24, 2012, each party seeking to offer exhibits at the hearing must physically serve (in the actual physical possession of the person being served) on all other parties and the hearing officer copies of exhibits that may be offered at the hearing. Service of the proposed exhibits will be the method of providing copies of exhibits to the parties as required by Rule 606 of the Rules of Procedure. All parties shall review the proposed exhibits prior to the hearing, and come to the hearing prepared to discuss whether each of the proposed exhibits should be admitted into evidence.

Dated this 18th day of January, 2012.



John Westra
Western Regional Manager

For: Shelley Keen
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 2012, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the following:

Document Served: **Notice of Hearing and Prehearing Order
Hearing Procedures for Application for Permit**

MOORE SMITH BUXTON & TURCKE
CHTD

C/O BRUCE M SMITH
950 W BANNOCK, STE 520
BOISE, ID 83702

ALLEN RANCH LLLP
2624 S INGLENOOK PL
MERIDIAN, ID 83642

CINDI BETHEL CARMONA
10421 W CAMPVILLE ST
BOISE, ID 83709

CRIS A MC CLINTICK
PO BOX 7
OROVADA, NV 89425

GERALD DYE
3 LIGE LN
CASCADE, ID 83611

GLENN FORD
569 BRENDA LN
CASCADE, ID 83611

JAMES T (JIM) BUNCE
PO BOX 890
CASCADE, ID 83611

LAWRENCE J CHESS
1200 LIZASO AVE
BOISE, ID 83709

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

NADEAN PERKINS
700 STEEPLEVIEW
EAGLE, ID 83616

RANDY MC CLINTICK
PO BOX 7
OROVADA, NV 89425

SANDRA M CHESS
1200 LIZASO AVE
BOISE, ID 83709

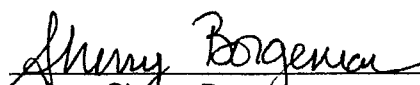
TERRY MC CLINTICK
PO BOX 18
OROVADA, NV 89425

TRESSA YOUNG
312 N ORCHARD HTS WAY
NAMPA, ID 83651

JAMES T (JIM) BUNCE
HAVASU RV RESORT
1905 VICTORIA FARMS RD #145
LAKE HAVASU CITY AZ 86404

SHELLEY KEEN
IDWR
322 E FRONT ST
6TH FLOOR
BOISE ID 83720

IRVIN R SHAW
2579 N DESTINY AVE
KUNA ID 83634


Sherry Borgeman
Administrative Assistant

**PRE-HEARING CONFERENCE AND/OR HEARING
PROCEDURE
APPLICATION FOR PERMIT**

ISSUES

Applications to appropriate the water of the state of Idaho are referred to as applications for permit, and are for the development of new water rights. Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation reduce the quantity of water under existing water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Will the proposed use conflict with the local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates?
8. If the proposed application is for a minimum streamflow, will it meet the requirements for local public interest, according to chapter 15, title 42, Idaho Code.
9. Is the source where the water is to be appropriated largely within the state's boundaries, irrespective of the location of any proposed power generating plant?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, 6, 7, 8 and 9 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issues 5 and 8 if applicable, lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for these issues.

IN THE NAME OF ALLEN RANCH LLLP

Answers to Issues for Application for Permit 65-23451

Issue No. 1

The proposed application **WILL** reduce the quantity of the water to other right users if this proposed **POD** is not controlled. Allen has been exceeding his water right and the terms of his irrigation season.

The adjudication claim profile report, dated July 19, 1999 in the IDWR file, indicates "This Right Shall Provide **No more than .02 CFS per Acre** when measured at Field Head gate", $.02 \times 83 = 1.66$ CFS. Allen has Eighty-three (83) acres of pasture that he has applied for a water right to irrigate. (See Exhibit No. 1)

Issue No. 2

YES, the water supply is sufficient for the purpose for which it is sought to be appropriated **IF** the diversion is properly controlled. It actually exceeds the amount of water permitted under water right 65-111X, .02 CFS per acre.

Issue No. 3

NO, THE ^APPPLICATION WAS not MADE IN GOOD FAITH. Allen ^{has} was not been honest with his attorney or the IDWR. Allen was not honest when he told the IDWR that he had not had any problems with the W.M.W. representative about the water shortage. Allen was not honest when he said he had verbal permission to access the POD, at elevation 5302. (See Exhibit #2 letter from Dwight Jividen)

Issue No. 4

YES, he does have sufficient financial resources with which to complete the proposed project.

Issue No. 5

IN THE NAME OF ALLEN RANCH LLLP

Answers to Issues for Application for Permit 65-23451

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YES, the proposed use will conflict with the local public interest. If Allen is permitted to divert water from elevation 5302, his unauthorized POD, as he has been allowed to use the last six or seven years, there will be a definite negative effect on all water permit users below him. This is exactly what all sixteen (16) protests are all about.

19 JTB

Issue No. 6

YES. Allen's diversion **must** be controlled. However, his request for cattle water is contrary to his need.

Issue No. 7

YES, the proposed use will affect the local economy of the area within which the source of water for the proposed use originates. If Allen is permitted to divert the water at elevation 5302 as he has been from his unauthorized POD, especially beyond his irrigation season, this would reduce the re-sale value of all the properties below 5302 elevation on Rock Creek. It would also have a negative effect on the aesthetic value on the properties along Rock Creek. This creek is part of the reason that the property owner purchased where they did.

Issue No. 8

NO, the proposed application will not meet the requirements for local public interest. See issue No. 7. No one has controlled the amount of water or the length of irrigation season for this unauthorized POD for several years.

Issue No. 9

YES. The source where the water is to be appropriated is within the State boundaries. The location of the proposed POD is on private property and the

IN THE NAME OF ALLEN RANCH LLLP

Answers to Issues for Application for Permit 65-23451

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applicant does not have permission for a POD in that location. See letter in Issue No 3 by Dwight Jividen dated August 29, 2010,

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: A65-03111X
Date Received: 11/17/1988
Receipt No: 29999999
Received By: [Signature]

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: E. K. ALLEN RANCHES INC.
Address: H C 71 BOX 2025
CASCADE, ID

208-382-4122

83611

2. Date of Priority: JUN 01, 1894 - *Richard Creek*

3. Source: ROCK CREEK (RICHARD CREEK) Trib. to: CASCADE RESERVOIR

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
13N	03E	3	NE NW	SE	VALLEY

5. Description of diverting works:
DIVERSION DAM AND DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/15	10/15	2.700		

7. Total Quantity Appropriated is:
2.700 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
13N	03E	3	NE	NE	IRR	23.0
			SW	NE	IRR	8.0
			SE	NE	IRR	31.0

Section Acres 62.0

A65-03111X

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Date: 11/17/88

MICROFILMED

SEP 22 1992



← NO water
in diversion

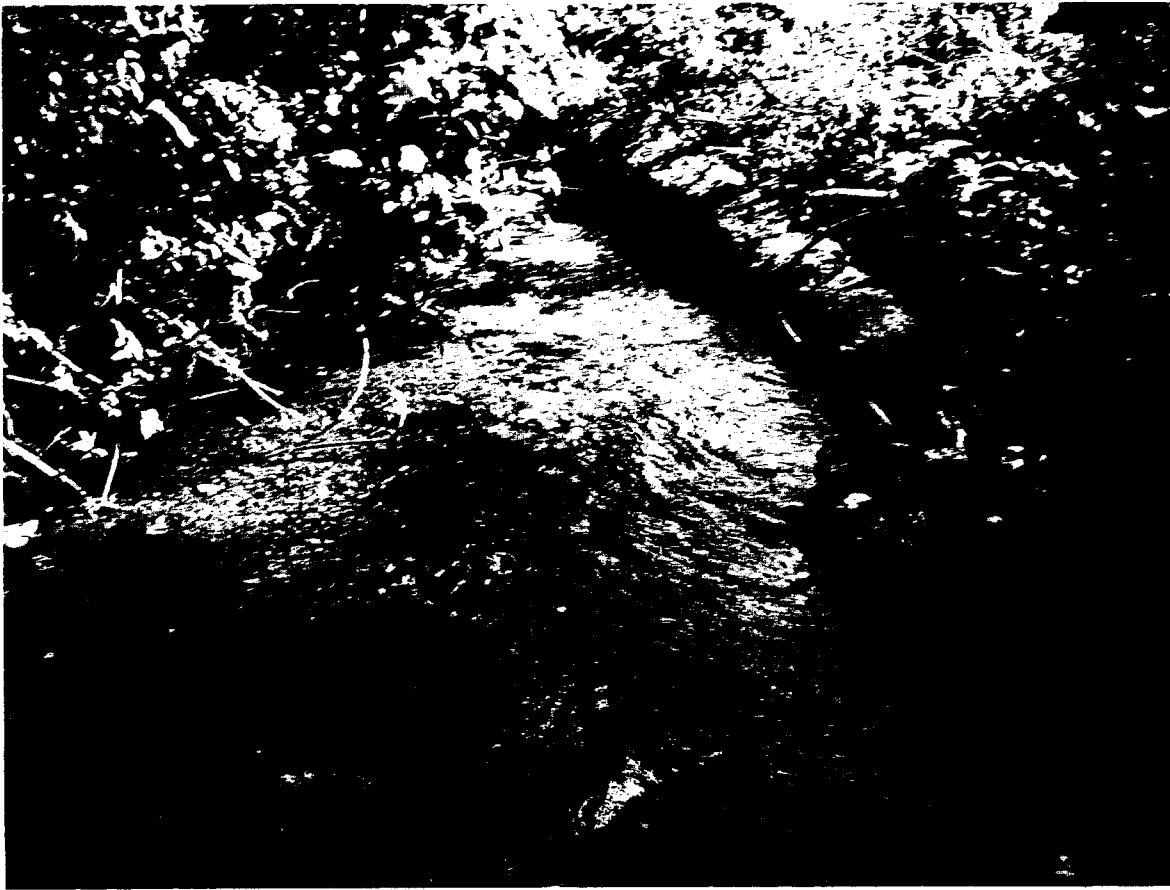
J R Allen's
Upper Diversion
(65 3111x)
6/6/2011



J R Allen's
Upper Diversion
(65 3111x)
6/13/2011

lots of water →

Allen's Upper P O D



Rock Creek
No Water

Allen's Ranch Upper P O D & Rock Creek

8- 26- 2011

Upper Diversion 2



Allen's Upper Diversion 5/3/2012



Big Rock Creek ↗



Allen's
Upper
Diversion

5 19 12

CLAIN US-02111 X UNIT 804
 E. R. 5. 070
 P/D 13N 14 2 NWSE
 SCALE 8" = 1 MILE
 PHOTO ID. 113 DATE 1961

See date 1/4/14