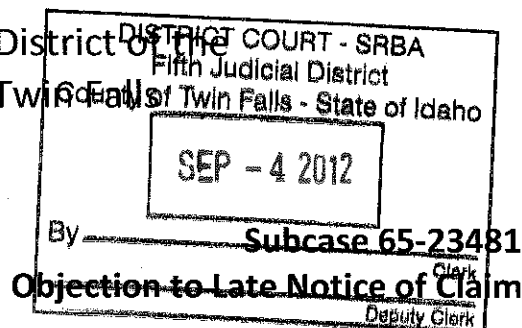


In the District Court of the Fifth Judicial District of the
State of Idaho, in and for the County of Twin Falls



RE: SRBA Case No. 39576

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

The following is respectfully submitted for consideration by Special Master Theodore Booth in the hearing for determination of "good cause" for the above referenced subcase, in *addition* to the objection I filed dated June 1, 2012.

The Motion to file Late Notice of Claim 65-23481 has not been filed for "good cause". The attorney for Allen Ranch LLP has indicated that the late claim was filed due to confusion as to the filing of stockwater and irrigation claims from the Payette adjudication in the SRBA. It appears as though this claim was filed at the suggestion of Steve Lester (Exh 1) of IDWR and not due to confusion.

There would have been no confusion for filing stockwater claims in basin 65 for parties that held a valid water right prior to May 4, 2001. These procedures were clearly defined in a letter (Exh 2) from IDWR to existing water right holders in basin 65.

This Late Notice of Claim has not been filed in good faith. Between March 16, 2011 and May 30th, 2012, IDWR issued a total of 4(Exh 3) water right and/or transfer application numbers for Allen Ranch LLP, to amend or change water right 65-3111X. These application numbers are in addition to the Late Notice of Claim 65-23481. This method of filing, withdrawing and re-filing, is clearly an attempt to harass, cause unnecessary delay and/or increase the cost of litigation for parties protesting the proposed changes.


Sandra Chess
September 4, 2012

Exhibit 1
7 pages



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

December 13, 2010

J R ALLEN
3166 CENTENNIAL AVE
BOISE ID 83706

Re: Water Right No. 65-3111X

Dear Mr. Allen:

Idaho Department of Water Resources (IDWR) staff visited the site of the above referenced water right with you on November 18, 2010, regarding a complaint about the situation. We appreciated your time to show us around the site and explain how your irrigation system works. This letter is to provide you with the results of that fieldwork and implications for your water right.

Please see the enclosed map showing sites 1 through 5 in T13N, R3E, Section 3 as follows:

1. Recorded diversion point for rights 65-3111A (subdivision), 65-3111F (Bureau of Reclamation) and 65-3111X (Allen) – in NWSE.
2. Recorded diversion point for right 65-13088 (subdivision) – in NESW (interpreted as somewhere on the creek in the $\frac{1}{4}$ $\frac{1}{4}$, not in the center of the tract).
3. Actual Allen upper diversion point – in NWSW.
4. Actual Allen lower diversion point – in SENE.
5. Pipe in ditch ("Home Ranch Creek") above West Mtn. Road – in SENW.

The diversions are from the unnamed stream locally known as "Rock Creek or Richard Creek."

Point #1 is an abandoned diversion. This means rights 65-3111A, F and X need to be corrected to accurately describe actual diversion points being used. For your right, this will include identifying the correct diversion points in NWSW (point #3) and SENE (point #4).

Water was being diverted in your upper diversion during the November visit. Your irrigation right authorizes diversion from April 15 through October 15. The amount of water to be diverted is limited to 2.70 cfs (135 inches) to irrigate 83 acres. The right exceeds one inch per acre and apparently covers ditch losses. Although not recorded on your irrigation right or on any other right, incidental stock water use during the irrigation season is considered a legitimate use under your irrigation right.

Right 65-3111X should be corrected to identify your upper and lower diversion points that are being used. This can be done by filing an Application for Transfer to delete the NWSE point and add the NWSW and SENE points.

*
Proven false - IDWR was given incorrect info.
A new water right would be needed to divert water for *your use* (emphasis added) outside of the irrigation season. An Application for Permit could be filed for a new right. Perhaps a new stockwater right for the non-irrigation season would be useful. However, stockwater rights are limited by the type and number of animals, generally providing much smaller flow rates than your irrigation right. The enclosed stockwater table lists the maximum diversion rates for stock use. Maybe some other type of new right could be obtained for the non-irrigation season, although it is hard to imagine what that might be. Please see the enclosed list of beneficial uses to see if anything useful can be identified for a new right. Simply diverting water down the ditch is not considered a beneficial use for your property – the diverted water would need to be used for something more tangible than that.

However, IDWR understands an agreement between you and the subdivision results in water diverted via your upper diversion to provide water to a subdivision pipe apparently originating in that ditch. If correct, this implies at least two things:

- Water is diverted for year around domestic use under one or both subdivision rights.
- One or both subdivision rights should include your upper diversion point as a diversion point for the subdivision.

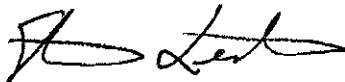
Under that scenario, the subdivision would be diverting water during the non-irrigation season in an agreement allowing use of your ditch.

In summary, you should correct right 65-3111X to identify the correct diversion points. You should not divert more than 2.70 cfs during the irrigation season for your use. Water should not be diverted during the non-irrigation season for your use unless you establish a new right for that. Water can be legally diverted in your upper diversion for year around subdivision use, assuming the subdivision corrects its water right records to cover this.

I understand you have retained attorney Bruce Smith to help you with these matters. A courtesy copy of this letter is being sent to him. A copy is also provided to the West Mountain Water Assn Inc. That organization should look into correcting right 65-3111A and/or right 65-13088 to properly identify the actual diversion point(s) used under those rights. Correcting 65-13088 should include using "Unnamed Stream" as the source and "North Fork Payette River" for the tributary. A copy is also provided to the Bureau of Reclamation to help correct right 65-3111F. Those water right owners should file Applications for Transfers to correct their rights.

IDWR forms and other information are available at www.idwr.idaho.gov. You and any of the other parties are welcome to contact me for more information. Thank you for your attention to this matter.

Sincerely,



Steve Lester
Water Rights Supervisor

Enclosures

Cc: Bruce Smith
West Mountain Water Assn Inc.
Bureau of Reclamation

Exhibit 1 continued
Additional guidance from
Steve Lester —



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX COVER SHEET

TO Bruce Smith / Cathy FAX # 331-1202
FROM Steve Lester DATE 4/8/2011
RE NOTES & ALLEN DRAFT APPLICATION.

TOTAL PAGES SENT 4 + COVER SHEET

WEBSITE TIPS - www.idwr.idaho.gov

See Search Tools menu. For best results, try a broad search first and narrow the search as needed to avoid overlooking the information you seek:

- **Water Right &/or Adjudication information:** Most information is organized by township, range and section. Township, range and section information is usually available from county assessor offices. For type of query, select all records then click the **where** tab and enter township, range, section (and maybe $\frac{1}{4}$ or $\frac{1}{4}$ of section). Be sure to choose "Point of Diversion" or "Place of Use" depending on the information you need ("both" means diversion and use within identical search parameters, not that either are within the parameters).
- **Well Construction information:** Results available in summary or detailed reports. **Summary Report** provides a table format for easy use, select individual record from table for scanned well log. Most well logs have been scanned and are available on the Internet.

If you cannot find information or have trouble interpreting information, please contact IDWR at 208-334-2190 from 8 a.m. to 5 p.m., Monday through Friday. Ask for the "office day person" for general help.

IDWR NOTES - DRAFT APPLICATION

Item 1 – applicant should be current owner consistent with transfer application JR recently filed.

Item 3 – diversion using existing system, upper point NWSW & lower point (if want to include) SENE.

Item 8 – acres are in NE ¼, list in 1st four boxes in chart. L8 & L7 refer to government lots.

Item 9 – add brief details about old right.

Item 10 – per transfer application JR amended 3/29/11:

Upper diversion property owner: West Mtn. Properties LLC. Access per verbal agreement with Dwight Jividen, registered agent.

(if included in application) Lower diversion on applicant property.

Proven
false

Item 11 – local names for source.

Item 12 – 1 year is minimum answer (covers existing systems, also).

Other Information

Possible although improbable that can be approved. Normally cannot approve irrigation use outside of standard irrigation season. Application needs to include information to demonstrate this is a beneficial use.

Be sure to include a map showing the points of diversion & place of use. This information is shown on JR's transfer application map – applicant can copy it & note on copy that it is for new application.

Fee for 2.70 cfs is \$330.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Ident. No. _____

1. Name of applicant(s) ALLEN RANCH LLLP Phone _____
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: NW SW

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #
13N.	03E	03			~~NE~~	~~SE~~	VALLEY	UNNAMED STREAM	Upper Allen
					SE	NE			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 _____ for _____ purposes from _____ to _____ (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. _____

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. _____

IDWR notes 4/8/11 e draft Application

8. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

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	21	8	31													83
			2.8	2.7															

Total number of acres to be irrigated: 83

9. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? 65-3111X SAME system,
SAME ACREAGE but 4/15-10/15

10. a. Who owns the property at the point of diversion? Applicant *
- b. Who owns the land to be irrigated or place of use? Applicant
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

11. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary.

* SEE dept. notes @ Responding to Access & Diversions

SOURCE locally known as Richard Creek & Rock Creek.

12. Time required for completion of works and application of water to proposed beneficial use is 1 (existing) years (minimum 1 year).

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Signature of Applicant

Signature of Applicant

Print Name (and title, if applicable)

Print Name (and title, if applicable)

For Department Use:

Received by _____ Date _____ Time _____ Preliminary check by _____

Fee \$ _____ Received by _____ Receipt No. _____ Date _____

No. W 27214	Due no later than Dec 31, 2010 Annual Report Form		2. Registered Agent and Address (NO PO BOX)			
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE	1. Mailing Address: Correct in this box if needed. WEST MOUNTAIN PROPERTIES, LLC DWIGHT JIVIDEN 413 CABARTON RD CASCADE ID 83611		DWIGHT JIVIDEN 413 CARBARTON RD CASCADE ID 83611			
			3. <u>New</u> Registered Agent Signature:*			
4. Limited Liability Companies: Enter Names and Addresses of at least one Member or Manager.						
Office Held	Name	Street or PO Address	City	State	Country	Postal Code
MEMBER	BRENT FOX	5086 DEBRON CT	POLLOCK PINES	CA	USA	95726
5. Organized Under the Laws of:		6. Annual Report must be signed.*				
ID W 27214		Signature: Dwight Jividen			Date: 10/09/2010	
		Name (type or print): Dwight Jividen			Title: Member	
Processed 10/09/2010		* Electronically provided signatures are accepted as original signatures.				



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,

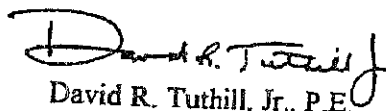

David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

Exhibit 3

18 pages - showing 4
separate water-
right #'s initiated
with IDWR by
Smith for Allen.
from March 2011
to May 2012.

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.

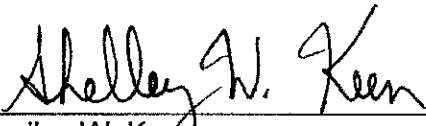
CONCLUSIONS OF LAW

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

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 STEEPLEVIEW
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

MOORE SMITH BUXTON & TURCKE CHTD
ATTN: BRUCE SMITH
950 W BANNOCK ST STE 520
BOISE, ID 83702

WEST MOUNTAIN WATER ASSN INC
C/O JIM BUNCE
PO BOX 388
CASCADE, ID 83611

TRESSA YOUNG
312 N ORCHARD HTS WAY
NAMPA, ID 83651

A handwritten signature in cursive script, reading "Jean Hersley", is positioned above a horizontal line.

Jean Hersley

Technical Records Specialist I

IDAHO DEPARTMENT OF WATER RESOURCES
Water Application Report

5/23/2012

③ WATER RIGHT NO. 65-23493

initiated
may 9th - 1 week
after withdrawal
of application 65-23493
and 77121

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ALLEN RANCH LLP 2624 S INGLENOOK PL MERIDIAN, ID 83642 (208) 866-4370
Attorney	MOORE SMITH BUXTON & TURCKE CHTD C/O BRUCE M SMITH 950 W BANNOCK, STE 520 BOISE, ID 83702 (208)331-1800

Priority Date: 05/09/2012
Status: Active

- no corresponding application -

<u>Source</u>	<u>Tributary</u>
ROCK CREEK	NORTH FORK PAYETTE RIVER
UNNAMED STREAM	NORTH FORK PAYETTE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	04/14	2.7 CFS	
IRRIGATION	10/16	11/30	2.7 CFS	
STOCKWATER	05/15	11/30	0.14 CFS	
STOCKWATER	01/01	12/31	0.14 CFS	
Total Diversion			2.7 CFS	

Location of Point(s) of Diversion:

Exh 3

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 *2 should be 83 -*

Close

May 29th 2012**TRANSFER NO. 77961**

(4)

ALLEN RANCH LLLP

2624 S INGLENOOK PL

MERIDIAN ID 83642, has filed Application No. 77961 for changes to the following water rights within
County: VALLEY

Purpose of Transfer	Water Right Number
---------------------	--------------------

not filed as Public Notice
as of 9-4-2012 - ?
why?

Right No. 65-3111X**Priority** Jun 1 1894 12:00AM**Source** UNNAMED STREAM,**Use** IRRIGATION(83 acres) 2.7 CFS,**Total Amount** 2.7 CFS**Point(s) of Diversion**

Township	Range	Section	QQQ	QQ	Quarter	GovernmentLotNumber
13N	03E	3		NW	SE	

Place 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	8	NENE	23	7	NWNE	21		SWNE	8		SENE	31

Total Acres: 83

The purpose of the transfer is to change the above rights a follows:

Proposed Right No. 65-3111X

Priority Jun 1 1894 12:00AM**Source** UNNAMED STREAM,**Use** IRRIGATION(83 acres) 2.7 CFS,**Total Amount** 2.7 CFS

Township	Range	Section	QQQ	QQ	Quarter	GovernmentLotNumber
13N	03E	3		NW	SE	

Place 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	8	NENE	23	7	NWNE	21		SWNE	8		SENE	31

Total Acres: 83

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AND COUNSELORS AT LAW
950 W. BANNOCK STREET, SUITE 520; BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202 www.msbtlaw.com

STEPHANIE J. BONNEY~
SUSAN E. BUXTON*
PAUL J. FITZER
JILL S. HOLINKA
BRUCE M. SMITH
PAUL A. TURCKE†
CHERESE D. McLAIN

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

May 30, 2012

Mr. Jeff Peppersack
Chief, Water Allocations Bureau
IDWR Western Region
2735 Airport Way
Boise, ID 83705-5082

RECEIVED

MAY 31 2012

WATER RESOURCES
WESTERN REGION

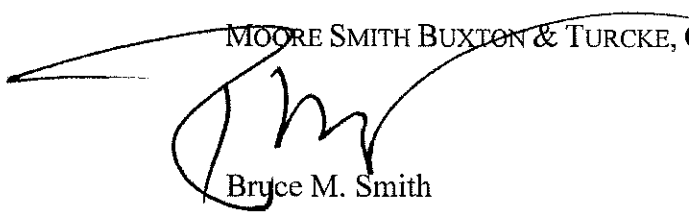
RE: Water Right No. 65-3111X – Cease & Desist Letter

Dear Jeff:

In response to your correspondence dated May 29, 2012, please see the attached Application for Transfer which was sent to the IDWR Western Region on May 25, 2012. Thank you.

Sincerely,

MOORE SMITH BUXTON & TURCKE, CHARTERED



Bryce M. Smith

BMS/cam
cc: client
Enclosure(s)

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MAY 31 2012

Rev. 07/11

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

MINIMUM REQUIREMENTS CHECKLIST TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at <http://www.idwr.idaho.gov/>.

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

Yes N/A

* Means the item is always required and must be included with the application.

- ☒ * Completed Application for Transfer of Water Right form, Part 1.
- ☒ * Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ * Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded.
- ☐ ☐ Complete and attach an Application for Transfer Part 2B for each water right for which only a portion is proposed to be changed through this transfer application.
- ☒ * Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☒ * Correct fee submitted with transfer application form. (Fee schedule is on website and instructions for application for transfer.)

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-9.

- ☐ ☐ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☐ #2a Water Right ownership documentation if Dept. records do not show the transfer applicant as the current water right owner. Additional fee(s) required for water right ownership changes; see fee schedule.
- ☐ ☐ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Additional fee(s) required for water right ownership changes; see fee schedule.
- ☐ ☐ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☐ ☐ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☐ ☐ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at <http://www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm>.
- ☐ ☐ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☐ ☐ #7b 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.
- ☐ ☐ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) Additional fee required for proposed changes to nature of use; see fee schedule.
- ☐ ☐ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☐ ☐ #9 Other. Please describe: _____

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Page _____ of _____

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of Applicant(s) Allen Ranch LLLP Phone _____

Mailing address 2624 S. Inglenook Place, Meridian, ID 83642 Email _____

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative Bruce M. Smith Phone 331-1800/631-3702 (cell)

Mailing address 950 West Bannock Street, Suite 520, Boise, ID 83702 Email bms@msbtlaw.com

☐ Send all correspondence for this application to the representative and not to the applicant.

OR

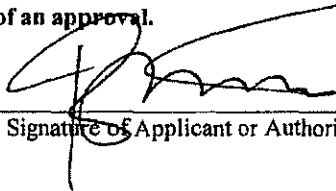
☒ Send original correspondence to the applicant and copies to the representative.

☐ The representative may submit information for the applicant but is not authorized to sign for the applicant.

OR

☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.



Signature of Applicant or Authorized Representative

Bruce Smith Counsel

Print Name and Title if applicable

5/24/12

Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2**. Correct the historical error in the recorded point of diversion. The upper and lower points listed on the next page and shown on the map have historically been used to irrigate the land. Stockwater for 600 head.

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	2.70cfs	Irrigation/Stockwater	04/15 to 10/15	Rock Creek/Little Rock Creek
☐ ☐				to	
☐ ☐				to	
☐ ☐				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 _____ 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 #
		NW	SW		3	13N	03E	Valley	Rock Creek/Little Rock Crk	Richard Creek/Rock Cr
		SE	NE		3	13N	03E	Valley	Rock Creek/Little Rock Crk	Richard Creek/Rock Cr
		SW	NE		3	13N	03E	Valley	Rock Creek/Little Rock Crk	Richard Creek/Rock Cr
		NE	NE		3	13N	03E	Valley	Rock Creek/Little Rock Crk	Richard Creek/Rock Cr
		NW	SE		3	13N	03E	Valley	Rock Creek/Little Rock Crk	Richard Creek/Rock Cr

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) _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued**

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future: _____

Gravity flow ditches, can install headgates & measuring devices in certain locations if needed.

- b. Who owns the property at the point(s) of diversion? United States Forest Service/West Mountain Properties/Applicant

* If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system: _____

None

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?

If yes, ☐ Attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: N/A

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:

N/A

- e. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:

None.

- f. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently leased to the Water Supply Bank,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right, or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the rights?

If yes, describe: _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2**

A. DESCRIPTION OF RIGHT(S) AS RECORDED

For each water right listed in Part 1B.1 of the application, attach a Part 2A report obtained from any Department office or from the Department's website @ <http://www.idwr.idaho.gov/>, Water Right Transfers, Step 1. Insert Part 2A reports into the application following Part 1.

B. IF ONLY A PORTION OF THE RIGHT IS PROPOSED TO BE CHANGED, DESCRIBE THE PORTION BEING CHANGED AS IT APPEARS BEFORE THE REQUESTED CHANGES

- ☐ Complete and attach one copy of Part 2B for each right for which only a portion is proposed to be changed. If the entire right is proposed to be changed, Part 2B is not applicable. Additional copies of the Part 2B form can be obtained from any Department office or from the Department's website @ <http://www.idwr.idaho.gov/>, Water Right Transfers, Step 3, or Water Right Forms, Changes in Use. Insert completed Part 2B forms into the application following Part 2A of the same water right.

Right Number: _____

1. amount _____ (cfs/ac-ft) for _____	purposes from _____	to _____
amount _____ for _____	purposes from _____	to _____
amount _____ for _____	purposes from _____	to _____
amount _____ for _____	purposes from _____	to _____
amount _____ for _____	purposes from _____	to _____
amount _____ for _____	purposes from _____	to _____
amount _____ for _____	purposes from _____	to _____
amount _____ for _____	purposes from _____	to _____

2. Lands irrigated or place of use: (If irrigation, identify with number of acres irrigated per $\frac{1}{4}$ tract.)

Twp	Rge	Sec	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres (for irrigation use) _____

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

<u>Source</u>	<u>Tributary</u>
UNNAMED STREAM	NORTH FORK PAYETTE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/15 to 10/15	2.700 CFS	
	<u>Total Diversion:</u>	2.700 CFS	

Location of Point(s) of DiversionUNNAMED 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
			L8	L7															

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

☒ Attach a map of the diversion, measurement, control, and distribution system. Label it **Attachment #7a**.

☐ 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 it **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**.

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.:

[illegible]

Transfer contains _____ pages and _____ attachments.

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

Fee Paid _____ Date _____ Received by _____ Receipt # _____

Add'l Fee Paid _____ Date _____ Received by _____ Receipt # _____



IDAHO SECRETARY OF STATE

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ALLEN RANCH, LLLP

2624 S INGLEBROOK PL
 MERIDIAN, ID 83642

Type of Business: LIMITED PARTNERSHIP

Status: CURRENT, ANREPT SENT 04 Apr 2012

State of Origin: IDAHO

Date of 17 Jun 1983

Origination/Authorization:

Current Registered Agent: J R ALLEN
 2624 S INGLENOK PL
 MERIDIAN, ID 83642

File Number: L373

Date of Last Annual Report: 14 Apr 2012

Original Filing:

Filed 17 Jun 1983 CERTIFICATE OF LP
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Amendments:

Amendment Filed 12 Aug 2005 AMENDED & RESTATED
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Amendment Filed 13 Nov 2007 NAME CHANGED TO ALLEN RANCH, LLLP
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Comments, questions or suggestions can be emailed to: sosinfo@sos.idaho.gov

No. L 373		Due no later than Jun 30, 2012		Annual Report Form				2. Registered Agent and Address (NO PO BOX)	
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE		1. Mailing Address: Correct in this box if needed. ALLEN RANCH, LLLP J.R. ALLEN 2624 S INGLEBROOK PL MERIDIAN ID 83642		J R ALLEN 2624 S INGLENOOK PL MERIDIAN ID 83642				3. <u>New</u> Registered Agent Signature:*	
Office Held	Name	Street or PO Address		City	State	Country	Postal Code		
GENERAL PARTNER	J.R. ALLEN JR ALLEN CATTLE CO INC	2624 S INGLENOOK PL		MERIDIAN	ID	USA	83642		
5. Organized Under the Laws of:		6. Annual Report must be signed.*							
ID		Signature: Jr Allen				Date: 04/14/2012			
L 373		Name (type or print): Jr Allen				Title: General Partner			
Processed 04/14/2012		* Electronically provided signatures are accepted as original signatures.							

