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DEPARTMENT OF
WATER RESOURCES

Attorney for J. R. ALLEN/ALLEN RANCH LLP

IN RE: Snake River Basin Adjudication
Case No. 39576

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Subcase No: 65-23481

**ALLEN RANCH LLP’S RESPONSE
TO BUNCE AND CHESS MOTIONS
TO ALTER OR AMEND SPECIAL
MASTER’S REPORT AND
RECOMMENDATION ON
STOCKWATER**

INTRODUCTION

ALLEN RANCH LLP'S RESPONSE TO BUNCE AND CHESS MOTIONS TO ALTER OR AMEND SPECIAL MASTER'S REPORT AND RECOMMENDATION ON STOCKWATER - Page 1

objectors would not be prejudiced.

ARGUMENT

The Bunce motion alleges the Special Master committed error with regard to facts concerning whether livestock could be watered year round because of weather, that the points of diversion in the late claim are incorrect, and that the claimant should file a transfer of another water right. Bunce does not address the Special Master's findings as to willfulness or that Bunce would not be prejudiced by allowing the late claim to proceed. Bunce also does not challenge the Special Master's conclusion that the claimant has a meritorious position.

Chess raises essentially the same objections to the Special Master's recommendation, i.e., livestock can't be watered in winter because of snow and weather, that the points of diversion are incorrect, and that the claimant should file a transfer application for another of its water rights. As did Bunce, Chess does not challenge the Special Master's recommendation findings as to the willfulness criteria or prejudice criteria, or his conclusion that Allen has demonstrated a meritorious position for its late claim. See I.R.C.P. 55(c).

Both Chess and Bunce have failed to show that the Special Master's findings and conclusion are inconsistent, much less contradict, the requirements set forth in IRCP 55(c). Instead, Chess and Bunce both challenge the elements of the claim, i.e., beneficial use issues and the point of diversion description. Likewise, neither Bunce nor Chess show how they might be prejudiced by allowing the late claim to proceed. The issues raised by Bunce and Chess are more appropriately focused on the water right claim, not whether Allen has established a meritorious position. See Order Granting Motion for Reconsideration As to Alternative Relief, Subcase 72-16779 et.seq. (motion to file late notice of claim is not place to argue merits of the claim but only whether

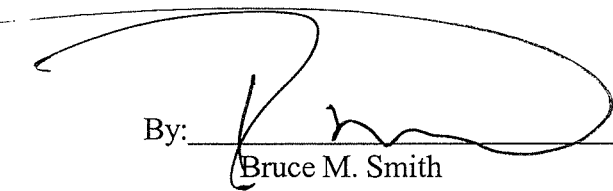
meritorious position was demonstrated.) The assertions that Allen should file a transfer of another right are irrelevant to the claimant's motion. The Special Master's recommendation as to the stockwater component of Allen's motion to file notice of late claim is factually and legally correct based on the requirements of I.R.C.P. 55(c). The motions should be denied.

CONCLUSION

The Bunce and Chess motions fail to address the criteria under IRCP 55(c) and raise only issues as to the claim itself. The motions should be denied.

Respectfully submitted this 25 day of October, 2012.

MOORE SMITH BUXTON & TURCKE, CHTD.

By: 

Bruce M. Smith

Attorney for Claimant Allen Ranch LLP

CERTIFICATE OF SERVICE

I hereby certify I served the original and true and correct copies of the foregoing **ALLEN RANCH LLP'S RESPONSE TO BUNCE AND CHESS MOTIONS TO ALTER OR AMEND SPECIAL MASTER'S REPORT AND RECOMMENDATION ON STOCKWATER** was this 25 day of October, 2012 served upon the following individuals and in the corresponding manner:

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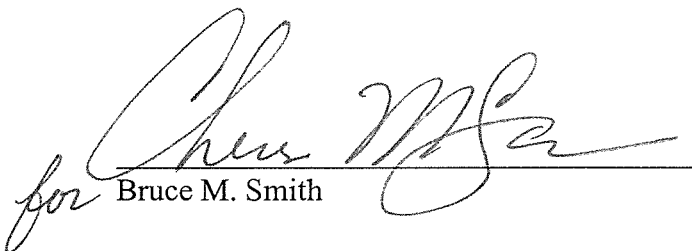
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