

12-06

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DEC 07 2012

DEPARTMENT OF
WATER RESOURCES

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

RE: SRBA Case No. 39576

Subcase 65-23481

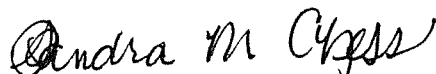
**Response to Allen Ranch LLP's Late
Affidavit dated November 21, 2012 /
Motion for Order Authorizing Discovery.**

My name is Sandra Chess and I am submitting a Motion for Order Authorizing Discovery and response to Allen Ranch LLP's Late Affidavit filed November 21, 2012 in reference to subcase 65-23481.

The intent under which Allen filed this affidavit is questionable. Both JR Allen and his attorney, Bruce Smith, had prior knowledge of photographs I have taken of the diversion of Rock Creek, from a point not identified in decreed water right 65-3111X, including my photographs taken on August 26, 2011. These photographs were intended as evidence in the hearing with IDWR for Allen's protested application to transfer 77121 (withdrawn) and subsequent application to transfer 77961 and/or 77941 (pending). I appreciate the opportunity to introduce exhibit(s) 1, 1A, 2 & 3, in response to Allen's late affidavit in subcase 65-23481.

Additionally; If the content of Allen's late affidavit¹ is deemed relevant to this subcase, I am requesting an Order Authorizing Discovery, and to delay the hearing scheduled for January 8, 2013, for 90 days. A reasonable amount of time to complete interviews, obtain affidavits, and prepare additional evidence in response to information contained in Allen's November 21, 2012 affidavit. Evidence will be relevant to my previous objection and to the facts that Special Master Booth will use in determining if Allen has demonstrated a meritorious position and if Allen's late claim was *willful*.

Respectfully submitted, this 6th day of December, 2012



Sandra M Chess

¹ Affidavit of JR Allen in support of motion to file late claim, pages 1-4 & exhibit B – attached for reference.

Exhibit 1

Photograph taken by Chess on October 30, 2010 of the original point of diversion for decreed water right 65-3111X – which corresponds with location described in exhibit 1A.



Exhibit 1A

Documents from IDWR records for water right 65-3111X.

Adjudication Claims Investigation report by Ron Howerton, July 19, 1999; pages 23, 24 & 25 of 69, noting correct location of the diversion point for this right (previously described, at location Allen refers to as the "lower diversion")

See attached labeled as Exhibit 1A (3 pages)

OWNER

CODE

NAME & ADDRESS

PRIORITY

DATE

WATER USE

USE PERIOD

DIVERSION

DIVERSION

C E K ALLEN RANCHES INC

11217 HWY 55

CASCADE ID 83611

(208) 382-4122

06/01/1894

IRRIGATION

04-15 10-15

2,700 CFS

2,700 CFS

TOTAL DIVERSION:

2,700 CFS

Water Source: UNNAMED STREAM

Tributary to: CASCADE RESERVOIR

Stage: DECREED

Point(s) of Diversion:

T13N R03E S03

NWSE

VALLEY County

Place of use Legal Description for: IRRIGATION

		NE		NW		SW		SE			
MENE NUNE SENE		NENW NUNW SENW		NENW NUNW SENW		NENE NWSE SWSE					
T	R	S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM
13N	03E	3	08-23	07-21	08	31	:	:	:	:	83.0
TOTAL ACRES										83.0	

POU County: VALLEY

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):

65-08808 65-08890 65-17056 A65-08808 A65-08890 A65-17056 R65-03111A R65-03111F

Remarks: QNT THIS RIGHT SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE WHEN MEASURED AT FIELD HEADGATE.

EXP SOURCE IS ALSO KNOWN AS RICHARD CREEK.

SOURCE IS ALSO KNOWN AS ROCK CREEK.

Dates: Exam Made Date: Verified Date: 07/19/1999 Objection Filed Date:

Misc: Water District Number: 65 Field Inspection Flag: Presumption Flag:

Comments: Date: 07/19/1999 User-ID: RHOBERTO Subject: POINT OF DIVERSION

FOUND ERROR IN LEGAL DESCRIPTION IN PRBA DECREE.

CONFIRMED ERROR WITH PRBA MAPS:

Exhibit 1A
p 2 of 4

AJ0769NP
No. R65-03111X

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 07/19/99
PAGE: 2

Comments: Date: 07/19/1999 User-ID: RHOBERTO Subject: POINT OF DIVERSION

MAP "A" T13N, R3E
MAP 1961 DHZ-288-113
BOTH ABOVE MAPS SHOW P/D IN THE NWSE, NOT AS DECREED.
SOURCE DOESN'T FLOW THROUGH DECREED TRACT CONFIRMED BY:
1985 TOPO MAP U10
1987 NAPP PHOTO

Audit: 07/19/99 RHOBERTO

Exhibit 2

Photograph taken by Chess in August 2010, from 7 Richard Creek, Cascade, ID, to document extreme low water in Rock Creek below West Mtn Road, due to Allen's diversion of Rock Creek upstream. (This low flow had not been experienced in year's prior.)



Chess - Response to Allen Ranch LLP's Late Affidavit dated November 21, 2012 /
Motion for Order Authorizing Discovery.

Exhibit 2

Exhibit 3

Photograph taken by Chess on **August 26, 2011** to prove that Allen is diverting nearly the entire flow of Rock Creek into Little Rock Creek from point of diversion inconsistent with decreed water right 65-3111X. (Exhibit 2 is an example of low flow in Rock Creek when this point of diversion is used by Allen.)



Chess - Response to Allen Ranch LLP's Late Affidavit dated November 21, 2012 /
Motion for Order Authorizing Discovery.

Exhibit 3

Certificate of Mailing

I certify that a true and correct copies of this Response to Allen Ranch LLP's Late Affidavit dated November 21, 2012 / Motion for Order Authorizing Discovery, were mailed on December 6th, 2012, with sufficient first-class postage prepaid to the following:



1. Original to: (via facsimile & first class US mail)

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: (via first class US mail)

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

Glenn Ford
569 Brenda Ln
Cascade, ID 83611

Allen Ranch LLP
Represented by:
Bruce Smith
950 W Bannock St, Ste 520
Boise, ID 83702

Valley County Sheriff
219 N Main St
P.O. Box 1350
Cascade, ID 83611

IDWR Director
P.O. Box 83720
Boise, ID 83720-2707

Jim Bunce
P.O. Box 890
Cascade, ID 83611

Dwight Jividen
West Mountain Properties LLC
413 Cabarton Road
Cascade, ID 83611

The following 6 pages are for reference only, for those not
previously provided with a copy.

Bruce M. Smith, ISB#3425
MOORE SMITH BUXTON & TURCKE, CHTD.
950 West Bannock Street, Suite 520
Boise, ID 83702
Telephone: 208-331-1800
Facsimile: 208-331-1202
Email: bms@msbtlaw.com

Attorney for J. R. ALLEN/ALLEN RANCH LLP

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re Snake River Basin Adjudication
Case No. 39576

Subcase No: 65-23481

AFFIDAVIT OF J.R. ALLEN IN
SUPPORT OF MOTION TO FILE
LATE CLAIM

STATE OF IDAHO

County of Ada

) ss.

COMES NOW, J. R. ALLEN and declares as follows:

1. My name is J.R. Allen. I am over the age of 18 and I make the following statement based on my own personal knowledge.

2. I have previously filed an Affidavit in this matter in support of my motion to file a late claim. A copy of my original affidavit is attached as Exhibit "A".

3. On Thursday, November 15, 2012, I went to the Valley County Sheriff's Office based on a call to my son from the Sheriff's office. The Sheriff's office had informed my son that the Sheriff's office had a report on its previous investigation of my reports that someone had been damaging my irrigation diversion in Rock Creek.

4. I had previously asked the Sheriff's office if they had a report, but the staff person could not find any.

5. On Thursday, I met with Brandy Husky of the Sheriff's office who provided me with a copy of Valley County Sheriff's Office Report #1101898. A copy of the report is attached as Exhibit "B". This is an accurate copy except for the shading on the document which resulted from my highlighting certain lines.

6. Jim Bunce and Sandra Chess have objected to my filing a late claim.

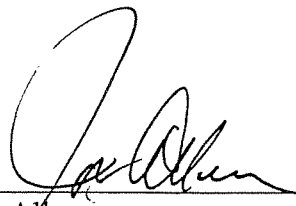
7. The Sheriff's report in the entry for July 8, 2011 confirms that the Sheriff's office had spoken with John Westra of the Department of Water Resources, who confirmed that I had water rights in Rock Creek and could divert at the location which I have claimed and to which Bunce and Chess have objected.

8. The report also documents the Sheriff's office's investigation of the damage done to my diversion and the Sheriff's observation that sufficient water allowed to go down Rock Creek to serve downstream water rights.

9. The Sheriff's office also gave me a CD of pictures the Sheriff's office had taken using a trail camera to photograph my diversion. Attached are the pictures from the Sheriff's office computer attached as Exhibit "C". The report indicates the Sheriff's office confirmed that the woman in the pictures at my diversion is Sandra Chess.

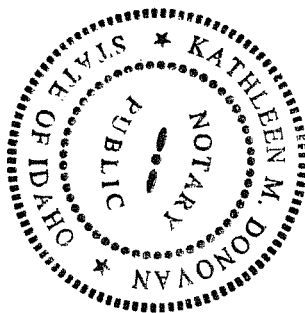
10. I would have provided this Sheriff's report in support of my motion to file a late claim but was unaware that the report had been prepared. I only learned of the report when the Sheriff's office contacted my son.

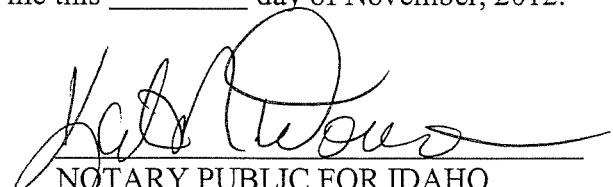
DATED this 21st day of November, 2012.



J. R. Allen

SUBSCRIBED AND SWORN to before me this 21st day of November, 2012.





NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My Commission Expires: 08/08/2018

Valley County Sheriff's Office
Report # 1101898

On 06-19-11 I was advised by dispatch that John Allen was having problems with someone destroying his diversion dam and diverting water from his canal. I was advised that on 06-10-11 Cpl. Copperi had taken photos of the area due to it being damaged again.

I arrived on scene and met with John Allen and his ranch hand Aaron Helmick. They showed me the area that was destroyed and where the water had been diverted. Due to being close to Forest Service land Officer Harvey with the Forest Service also came up to the area. I photographed the area and then cleared.

I was advised by Officer Harvey that this was not Forest Service property, but that it belonged to a property management company and was managed by Dwight Jividen.

On 07-08-11 I spoke with John Westra the regional Manager of State of Idaho Department of Water Resources and he stated that Allen had water rights to this creek and the location that he was diverting water at. Westra stated that the water rights were being challenged by homeowners in the area. ~~Westra~~ ~~showed me documentation showing that Allen had water rights to this creek and the right to divert water at this location.~~ GPS coordinates were attached.

On 07-15-11 I spoke with Bruce Smith, Allen's lawyer, and discussed what paper work had been filed and I advised him of what the Sheriff's Office was doing.

On 07-17-11 I spoke with Jividen and advised him that Allen had water rights to the creek and he was advised it would result in criminal charges if he or anyone else interfered with the diversion dam. I also spoke to Jim a resident in the area that was extremely rude on the phone and he was advised of the same information.

On 08-14-11 I drove up to the diversion dam and photographed it. Nothing had been tampered with or moved since the last time I was there.

On 08-25-11 Cpl. Copperi and I met with Allen Jr. and Sr. at the Sheriff's Office and they advised that someone had interfered with the diversion dam again. Allen Jr. stated that he photographed it and then replaced the dam, because there was no water making it down there canal to the north pastures. Allen's use this water to irrigate their cattle field along the west side of Cascade Reservoir.

I photographed the creek and diversion dam. Later that day Cpl. Copperi and I returned to the area and placed a trail camera facing the diversion dam. I also spoke to ~~Allen~~ again and advised him of the problems we were facing and he stated that they had advised all the owners that have called that Allen has water rights and the right to divert water at that location. ~~Westra stated that Allen only has to allow enough water to travel down stream to fill a 2" poly pipe, which provides water for some residence. He stated that Allen had the right to the rest of the water in the creek.~~

At this point and every other time I have responded to this location Allen has been allowing far more water than required to travel down stream. There is a steady stream of water flowing even beyond the point of the 2" poly pipe (this is after it has been filled.)

While investigating this I found a 4" light blue pipe (down stream from the 2" poly pipe intake) had been placed in the creek. This pipe was diverting water to a private residence, owned by Ford, and was being used to fill a pond he had created. Westra stated that he had sent a letter to Ford requiring him to stop taking water and to remove the pipe from the creek. Ford had placed logs and other sticks in the creek to rest his pipe on. I advised Ford over the phone that I had been requested by the State of Idaho Department of Water Resources to advise him he needed to remove the pipe from the stream or he would be charged criminally for wrongful diversion of water.

On 09-23-2011 I returned to the diversion dam site and collected the camera that I had placed. I downloaded the pictures from the camera and on those pictures was a female standing in the creek next to the diversion dam. The female was taking pictures of the diversion dam, but did not appear to damage it.

Valley County Sheriff's Office
Report # 1101898

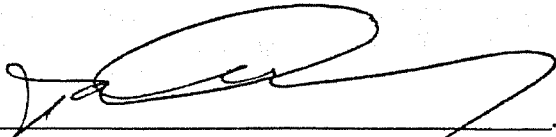
This appeared to be the same female that Allen is suspecting of damaging and /or removing the diversion dam, according to his description of her. Positive identification will try to be made using the photograph.

No further damage has been reported to the diversion dam at this time. A copy of this report will be filed until further reports are made or more information is made available.

The female on the video was identified as Sandra Chess by her driver's license photo provided by dispatch.

EVIDENCE:

1. **DIGITAL PHOTOS**
2. **DIGITAL PHOTOS TAKEN BY ALLEN**
3. **DIGITAL PHOTOS FROM TRAIL CAMERA**
4. **LETTERS FROM STATE OF IDAHO DEPARTMENT OF WATER RESOURCE**



Cpl. Tom Cimbalik
Valley County Sheriff's Office

#2111
10-20-2011