

APPLICANT'S EXHIBIT LIST

- A-1. Applicant for Transfer No. 78252
- A-2. Application for Permit No. 65-23493
- A-3. Decree in *Allen v. Withers*
- A-4. Water Right No. 65-3111x
- A-5. November 21, 2012 Affidavit of J.R. Allen
- A-6. August 28, 2013 Affidavit of J.R. Allen
- A-7. September 4, 2013 Affidavit of J.R. Allen
- A-8. Allen Ranch LLP's Idaho Secretary of State Business Entity Verification
- A-9. Photographs
- A-10. June 19, 2011 Letter from West Mountain Water Association to IDWR
- A-11. June 16, 2011 IDWR Letter to Jim Bunce
- A-12. July 25, 2012 Allen Letter to John Westra
- A-13. Photographs.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No.

78252
77961

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

AMENDED

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/>.

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WATER RESOURCES
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- Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.
- * Means the item is always required and must be included with the application.
- ☒ Yes ☐ N/A * 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:

Exh. No.	10
Date	
Name	JJ-MWB
	Chad
	M & M Court Reporting

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ORIGINAL

EXHIBIT A-1

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No.

78252
77961APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Pmo 9/30/13

Name of Applicant(s) Allen Ranch LLLP

Phone

Email

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

AMENDED

- ☐ 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. SmithPhone 331-1800/831-3702 (cell)Mailing address 950 West Bannock Street, Suite 520, Boise, ID 83702Email 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

Print Name and Title if applicable

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.

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EXHIBIT A-1

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	

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/Reck Cr
		SE	NE		3	13N	03E	Valley	Rock Creek/Little Rock Crk	Richard Creek/Reck Cr
		SW	NE		3	13N	03E	Valley	Rock Creek/Little Rock Crk	Richard Creek/Reck Cr
		NE	NE		3	13N	03E	Valley	Rock Creek/Little Rock Crk	Richard Creek/Reck Cr
		NW	SE		3	13N	03E	Valley	Rock Creek/Little Rock Crk	Richard Creek/Reck 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) _____

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EXHIBIT A-1

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:
West Mtn. Properties (NWSN point)
historical permission
- 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:

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EXHIBIT A-1

02/23/2011

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 65-3111X

WATER RIGHT NUMBER: 65-3111X

Owner Type

Current Owner

Name and Address

E K ALLEN RANCH LTD PARTNERSHIP
PO BOX 474
CASCADE, ID 83611
(208)382-4122

Part 2 A

Priority Date: 06/01/1894

Basis: Decreed

Status: Active

Source

UNNAMED STREAM

Tributary

NORTH FORK PAYETTE RIVER

Beneficial Use

IRRIGATION

From To
4/15 to 10/15

Diversion Rate
2.700 CFS

Annual Volume

Total Diversion: 2.700 CFS

Location of Point(s) of Diversion

UNNAMED STREAM

NW1/4SE1/4

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

VALLEY County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
13N	03E	3	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	83.0
			23.0	21.0	8.0	31.0													
			L 8	L 7															

Total Acres: 83

Conditions of Approval:

1. SOURCE IS ALSO KNOWN AS RICHARD CREEK.
SOURCE IS ALSO KNOWN AS ROCK CREEK.
2. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
3. THIS RIGHT SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE WHEN MEASURED AT FIELD HEADGATE.

Dates and Other Information:

Decreed Date: 10/31/2000

Water District Number: 65

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JUN 26 2012

EXHIBIT A-1

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

APPLICATION FOR TRANSFER OF WATER RIGHT PART 3

A. PLAT MAP (See Part 3A of Instructions for application for transfer for complete requirements.)
☒ Attach a map of the diversion, measuring at least 100 feet in each direction from the diversion point.

- ☒ 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.

B. CHANGES IN NATURE OF USE (Water Balance)

- ☐ 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.

C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

- ☐ 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.:

FOR DEPARTMENT USE ONLY

Transfer contains 7 pages and 2 attachments.
 Received by RS Date 5.29.12 Prelim. Check by R. F. J. Date 7/10/7/28/2013
 Fee Paid 660.00 Date 5.29.12 Received by RS Receipt # W040215
 Add'l Fee Paid _____ Date _____ Received by _____ Receipt # _____

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JUN 26 2014 EXHIBIT A-1

AMENDED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

Ident. No. 65-23493By 9/30/131. Name of applicant(s) Allen Ranch LLPName connector (check one) ☐ and ☐ or ☐ and/orPhone (208) 866-4370Mailing address: 2624 S. Inglenook PlaceCity MeridianState ID Zip 83642

Email: _____

2. Source of water supply Rock Creek/Little Rock Creekwhich is a tributary of Payette River North Fork

3. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #
13N	03E	03		NW	SW		Valley	Rock Creek/Little Rock Ck	
13N	03E	03		SE	NE		Valley	Rock Creek/Little Rock Ck	
13N	03E	03		SW	NE		Valley	Little Rock Ck	western begin
13N	03E	03		NE	NE		Valley	Little Rock Ck	western end

4. Water will be used for the following purposes:

Amount 2.7 for Irrigation purposes from 10/16 to 11/30 (both dates inclusive)
(cfs or acre-feet per year)Amount 2.7 for Irrigation purposes from 03/15 to 04/14 (both dates inclusive)
(cfs or acre-feet per year)Amount .14 for Stockwater purposes from 05/15 to 11/30 (both dates inclusive)
(cfs or acre-feet per year)Amount .14 for Stockwater purposes from 01/01 to 12/31 (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. See attached description

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 ☐ Noe. If well is already drilled, when? _____; drilling firm _____;
Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Description of proposed uses (If Irrigation only, go to item 8):

a. Hydropower; show total feet of head and proposed capacity in kW. _____

b. Stockwatering; list number and kind of livestock. 600 head cattle

c. Municipal; show name of municipality or the applicant's qualifications as a municipal provider. _____

d. Domestic; show number of households _____

e. Other; describe fully. _____

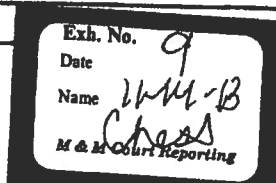
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JUN 26 2012

ORIGINAL
EXHIBIT A-2

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	X				X				X				83
13N	03E	3	S	S	S	S	X				X				X				

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

10. a. Who owns the property at the point of diversion? Applicant + WEST MTN. PROPERTIES

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: HISTORICAL PERMISSION

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

12. Time required for completion of works and application of water to proposed beneficial use is 1 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

Bruce M. Smith, Attorney for J.R. Allen
Print Name (and title, if applicable)

Signature of Applicant

Print Name (and title, if applicable)

For Department Use:

Received by RS Date 5-9-12 Time 11:18 AM Preliminary check by _____
Fee \$ 530- Received by RS Receipt No. W040161 Date 5-9-12

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2

1111 5. 2012

EXHIBIT A-2

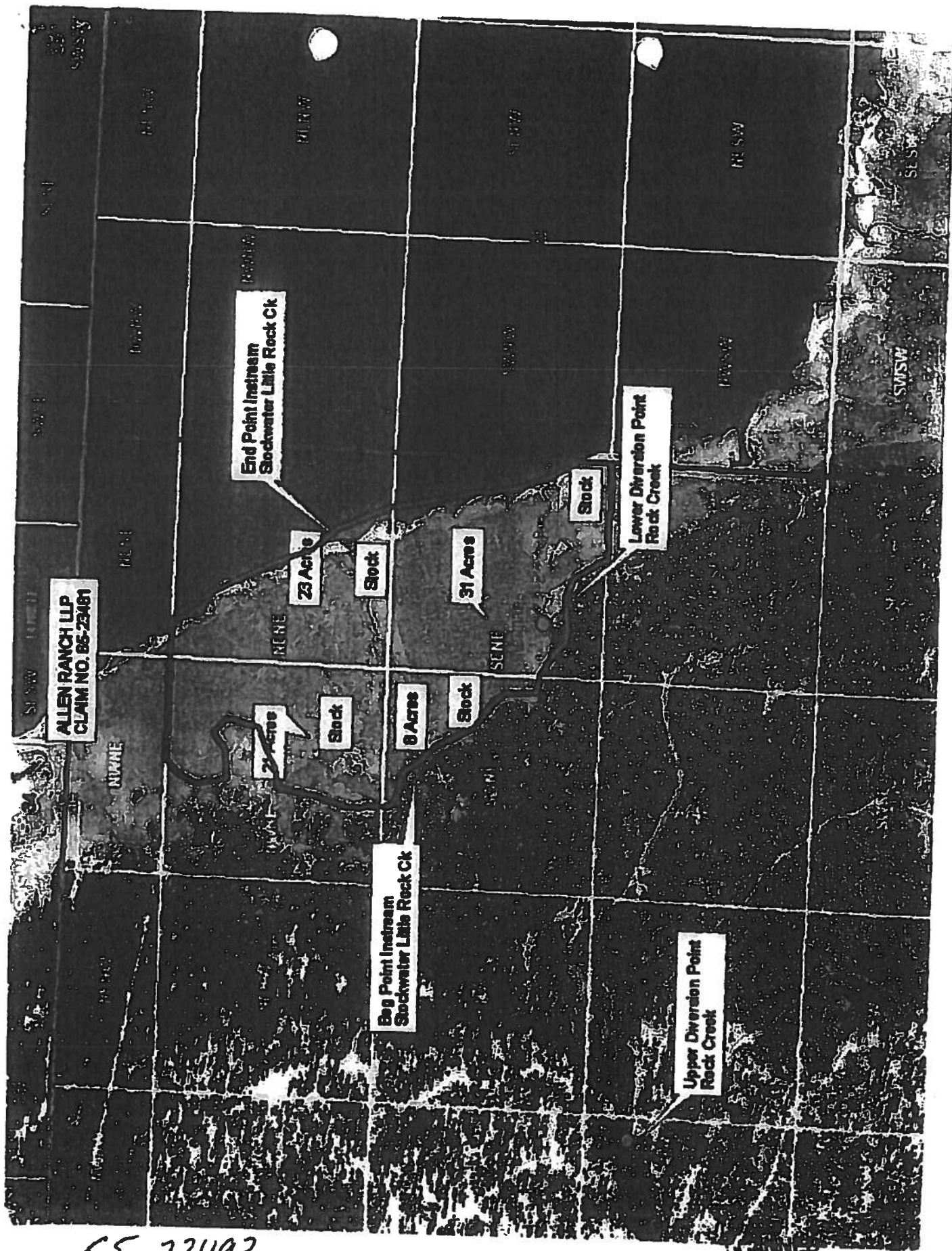
APPLICATION FOR PERMIT - ALLEN RANCH LLP

6a. Existing upper diversion dam in Rock Creek and gravity flow ditch (aka Little Rock Creek) for irrigation and stockwater. Instream stockwater year round for Little Rock Creek. Lower diversion point from Rock Creek for irrigation and stockwater.

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JUN 26 2012

EXHIBIT A-2



65-23493

1930
Decree 650

① IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

MARY R. ALLEN and D. K.
ALLEN,
Plaintiffs,
-vs-
W. N. WITHERS and MAUD
WITHERS,
Defendants.

D E C R E E
Case No. 484 Inst. No. 12
DISTRICT COURT VALLEY COUNTY
IDAHO
Filed: Oct 13 1930 at M.
FOREST E. ROBB - Clerk
By Bernice A. Kerby -
Deputy.

This cause came on regularly for trial before the court without
a jury in the district courtroom at Cascade, Idaho, on the 18th day of
July, 1930; F. M. Kerby and Wm. M. Morgan, appeared for the plaintiffs,
and Fred M. Taylor and Rhodes & Estabrook appeared for the defendants;
witnesses were called, sworn and examined on behalf of the respective
parties, the evidence was closed and both parties rested; the matter was
submitted for decision and the court, being fully advised in the premises,
made findings of fact and conclusions of law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED as

follows:
65 3111
~~6510111~~

1.

That the plaintiffs, Mary R. Allen and D. K. Allen, be, and they
hereby are, decreed, awarded and allotted 160 miner's inches, continuous
flow, of the waters of Rock Creek and its tributaries, which stream is
tributary to Willow Creek, which flows into the North Fork of the Payette
River, west of Cascade, Idaho, and they are the owners of the right to
divert said amount of water from said stream for the irrigation of and
domestic use upon their land described as follows:

The SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, and the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 2;

A

1/26/12 d'use

Disallowed
Rec'd as
65-3111X

and Lot 8, and the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 3, all in Township 13 N. R. 3 E., B.M. in Valley County, Idaho, containing 200 acres more or less,

with date of priority of June 1, 1894;

65 3112

11.

~~6520112~~

That the plaintiffs, Mary R. Allen and D. K. Allen, be, and they hereby are, decreed, awarded and allotted 100 miner's inches, continuous flow, of the waters of Rock Creek and Little Rock Creek and their tributaries, which streams are tributaries to Willow Creek, which flows into the North Fork of the Payette River, west of Cascade, Idaho, and that they are the owners of the right to divert said amount of water from said streams for the irrigation of and domestic use upon their land described as follows:

Lots 3 and 4 in Section 2, and Lots 1, 2, 3, 4 and 7 in Section 3, all in Township 13 North, Range 3 East, B.M., in Valley County, Idaho, containing 149 acres, more or less,

with date of priority of July 4, 1917;

65 3113

111.

~~6520113~~

That the defendants, W. M. Withers and Maud Withers, be, and they hereby are, decreed, awarded and allotted 80 miner's inches, continuous flow, of the waters of Rock Creek and its tributaries and 30 miner's inches, continuous flow, of the waters of Little Rock Creek and its tributaries, which streams are tributaries to Willow Creek, which flows into the North Fork of the Payette River, west of Cascade, Idaho, and that they are the owners of the right to divert said amounts of water from said streams for the irrigation of and domestic use upon their land described as follows:

The east half of the Southeast Quarter of Section 34, and the West Half of the Southwest Quarter of Section 35, all in Township 14 North, Range 3 East, Boise Meridian, containing 160 acres,

with date of priority of June 1, 1898;

IV.

That each of the parties hereto, their agents, servants, employees, successors, and all persons acting in their behalf, or on behalf of either of them, be perpetually enjoined from in any manner interfering with the rights of the other parties hereto to the use of said waters, and in any manner interfering with the ditches, canals, laterals, or other means of diversion or distribution of said waters;

V.

That a miner's inch of water, as herein mentioned, is equivalent to a full $1/50$ cubic foot of water per second.

VI.

That the parties to whom rights are herein allotted and their successors in interest shall, at their own cost and expense, install and maintain suitable and efficient headgates, controlling works, and measuring devices at their respective points of diversion from the streams from which water is diverted by them, and all waters herein allotted and decreed shall be measured at said points of diversion; said works and devices shall be built, installed and maintained in accordance with plans and specifications to be approved by the official charged by law with the duty of supervising the distribution of water; all such divices shall be of such design as to accurately measure the water diverted; all such headgates, control works, measuring devices and gauges shall, at all times, be subject to inspection by any party hereto and by the public officials or watermasters having jurisdiction over the distribution and diversion of the waters, and no dam or other obstruction to the natural flow of either of the streams from which water is taken shall be maintained so as to divert water from the channel thereof except through ditches, canals or other works provided

with such headgates, control works, and measuring devices; each of the parties hereto is hereby perpetually enjoined from diverting from the channel of either of said streams any water to any ditch, conduit or other device not provided with such headgates, control works and measuring devices;

VII.

That plaintiffs have, and they hereby are awarded, judgment against the defendant, W. N. Withers, for their costs and disbursements herein necessarily expended hereby taxed at \$ 162.55.

Dated this 10th day of October, 1930.

Recorded Judgment Record 2 Page 161.

A. C. Sutton
District Judge.

Compared x
Indexed-Direct x
Indexed-Indirect x

STATE OF IDAHO,) ss.
County of Valley,)

I, Forest E. Robb Ex-officio Auditor & Recorder
in and for Valley County, Idaho, DO HEREBY CERTIFY AND DECLARE that I have compared
the foregoing "Decree"
with the record of such Instrument
in my office, which instrument is (not and indexed) in Book 2 of Judgments
(Recorded)
at page 161, and that the foregoing is a true and correct copy
of such record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this
18th day of May, 1931.

FOREST E. ROBB

Ex-Officio Auditor and Recorder,
Valley County, Idaho.

By: Quinn C. Fierby
Deputy

97

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

MARY R. ALLEN
D. K. ALLEN
Plaintiffs
-vs-
W. N. WITHEBS
MALED WITHEBS
Defendants

DECEES

Actual is
ICover Report

FINDINGS and CONCLUSIONS

of

COMMISSIONER OF RECLAMATION

= MAY 1931
Dist. Findings

Re: DISTRIBUTION AND USE OF WATER
under the decree of the Supreme Court of the United States
in the case of *Wheeler v. United States*, 231 U.S. 359, 12 S.Ct. 101, 58 L.Ed. 1001

The complaint of Defendant WITHEBS in the above entitled action with reference to the distribution and use of water under the decree: After examination on the ground and from the testimony of the plaintiff and the defendant in the above entitled action, together with that of other parties having knowledge of the facts, this department has arrived at the following findings-of-fact and conclusions as to the rights, duties, and obligations of the respective parties, to-wit:

1. That the State Commissioner of Reclamation of the State of Idaho is the public official having jurisdiction over the distribution and diversion of the water under and pursuant to the terms of the decree herein;

SCANNED
7-15-92

JUN 26 2012

EXHIBIT A-3

2. That inasmuch as at the present time there are only about 40 inches of water in ROCK CREEK at Plaintiff ALLEN's upper diversion, whereas he has a prior decree for 160 inches, Defendant WITHERS has no right nor interest in or to the natural flow of ROCK CREEK at this time;
3. That LITTLE ROCK CREEK is not a tributary of ROCK CREEK and that Defendant WITHERS has a prior right under the decree to divert and use all of the water of LITTLE ROCK CREEK up to the amount of his decree, to-wit: 30 minor's inches;
4. That Plaintiff ALLEN has no right to divert and transfer water decreed to him for use upon a specific tract of land to other lands without securing a permit for such transfer from this department, which permit can be secured only by due process of law, with a showing that such diversion would not damage another appropriator;
5. That in this instance the diversion of water from the specific tract of land to which it was decreed to Plaintiff ALLEN for use upon other land would be a damage to Defendant WITHERS for the reason that in regular course and incident to the irrigation of such land said WITHERS now receives the benefit of the use of the return flow, seepage, and percolating waters from the irrigation of the land to which it was decreed, of which use he would be deprived by such change of place of use;

7-15-32

"A change of place of use of the water will not be permitted where to do so would damage another appropriator." Hall -vs- Blackman (22 Ircho 656)

6. That one WESLEY HARTLEY, who has attempted to divert, and in fact has actually diverted, water from LITTLE ROCK CREEK to irrigate what is known as the WASHINGTON lands, was not, nor was his predecessor-in-interest, a party to the above entitled action, and the records of this office do not disclose that he has any right, title or interest in and to the waters of LITTLE ROCK CREEK or to any of the stream mentioned in the decrees, so it would seem that by his action he is liable to prosecution for unlawful diversion of water and would be liable in damages to any one injured by his acts, but that is a matter outside of the jurisdiction of this Department.

It is assumed that both the plaintiff and the defendant in the above entitled action have copies of the decrees in their possession and are familiar with the terms and conditions and requirements thereof, but at this time this department desires to call special attention to the following provisions of the decrees:

"IV.

That each of the parties hereto, their agents, servants, employees, successors, and all persons acting in their behalf, or on behalf of either of them, be perpetually enjoined from in any manner interfering with the rights of the other parties hereto to the use of said waters, and in any manner interfering with the ditches, canals, laterals, or other means of diversion or distribution of said waters;

V.

That a miner's inch of water, as herein mentioned, is equivalent to a full 1/50 cubic foot of water per second.

SCANNED

7-15-32
JUN 26 2017

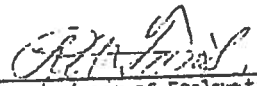
EXHIBIT A-3

I.

That the parties to whom rights are herein allotted and their successors-in-interest shall, at their own cost and expense, install and maintain suitable and efficient headgates, controlling works, and measuring devices at their respective points of diversion from the streams from which water is diverted by them, and all waters herein allotted and decreed shall be measured at said points of diversion; said works and devices shall be built, installed and maintained in accordance with plans and specifications to be approved by the official charged by law with the duty of supervising the distribution of water; all such devices shall be of such design as to accurately measure the water diverted; all such headgates, control works, measuring devices and gauges shall, at all times, be subject to inspection by any party hereto and by the public officials or watermasters having jurisdiction over the distribution and diversion of the waters, and no dam or other obstruction to the natural flow of either of the streams from which water is taken shall be maintained so as to divert water from the channel thereof except through ditches, canals or other works provided with such headgates, control works, and measuring devices; each of the parties hereto is hereby perpetually enjoined from diverting from the channel of either of said streams any water to any ditch, conduit or other device not provided with such headgates, control works and measuring devices."

Under and pursuant to the terms and conditions of the decree and of Section 5617, Idaho Compiled Statutes, as amended by Chapter 19 (Senate Bill No. 21), Session Laws of 1927, all parties-in-interest are hereby advised and notified to provide suitable headgates, control works, measuring devices, and gauges; failing in which, action will be taken by this department pursuant to the terms of the above section of the law.

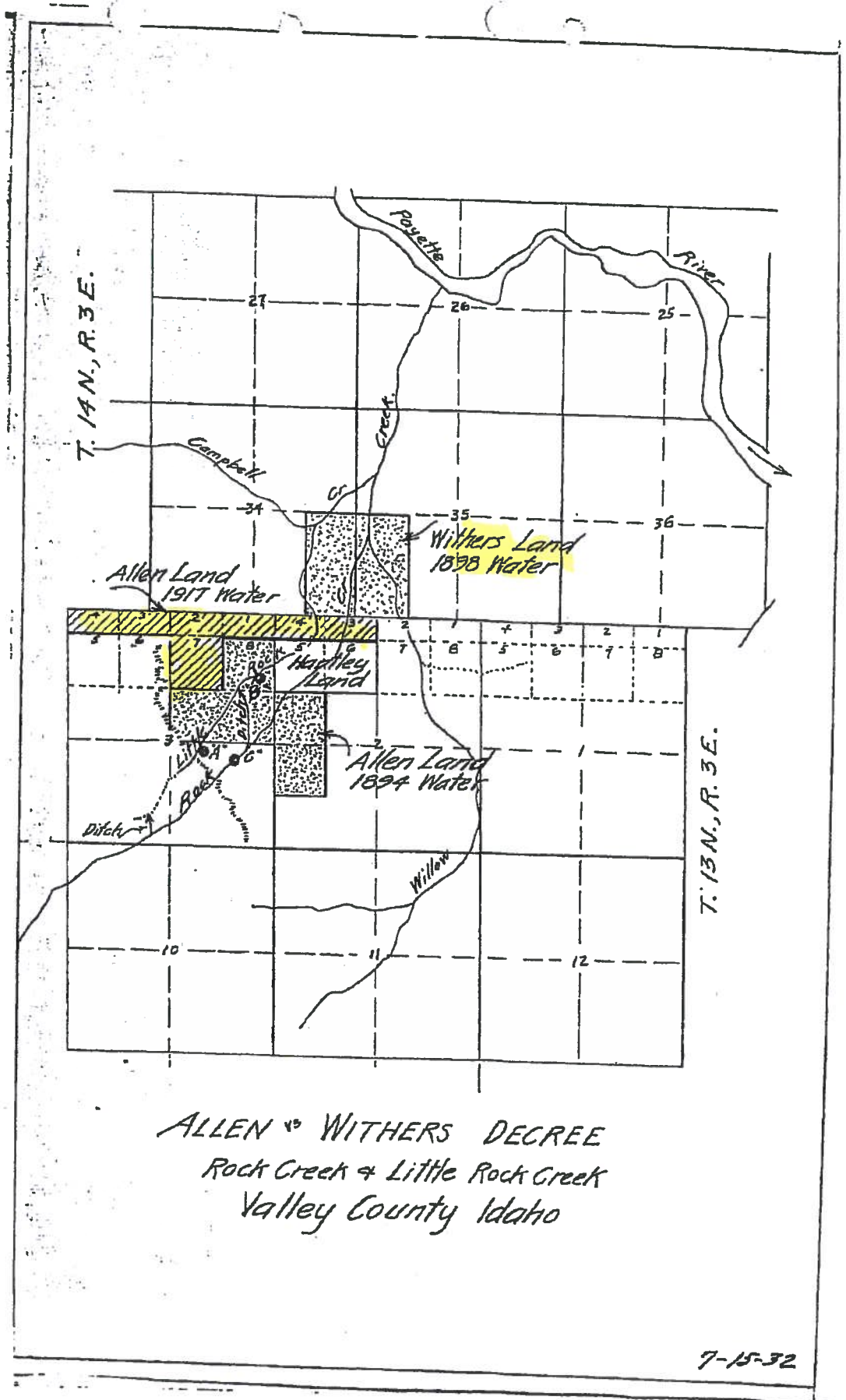
Dated, this 25th day of May, 1931


Commissioner of Reclamation

To: D. K. ALLEN
cc: W. H. WITMERS

7-15-32

EXHIBIT A-3



1932

PORT ON DECREE, OCTOBER 10, 1894, ALLEN - WITHERS, ROCK CREEK
AND TRIBUTARIES, VALLEY COUNTY, IDAHO

The controversy in this case divides itself into three parts:

1. Use by Allen of 1894 decree, Rock Creek water upon lands other than those described in the decree for this particular right, viz., land which was awarded a later right, thereby depriving Withers of waste and return flow;
2. Diversion of LITTLE ROCK CREEK water awarded to Withers by a third party who claims a prior right thereto, although he was not made a party to the adjudication and has no record right;
3. A determination of the amount of natural flow of LITTLE ROCK CREEK, which is curtailed by Allen's diversions from LITTLE ROCK CREEK to LITTLE ROCK CREEK, and using that channel as a carrier until its ditches are reached.

PART 1.

The decree awards Allen 100 inches from Rock Creek and tributaries; date of priority - June 1, 1896, for the irrigation of, and domestic use upon:

SW¹/₄ NE¹/₄, NW. 1/4, Section 2; Lot 2, SW¹/₄ NE¹/₄, Sec. 3,
Township 13 North, Range 3 East of Boise Meridian.

Allen was, also, awarded a subsequent right from LITTLE ROCK CREEK - 100 inches, date of priority - July 4, 1917, for the irrigation of, and domestic use upon:

Lots 5 & 6, Sec. 2; Lots 1, 2, 3, 4 & 7, Sec. 3,
Township 13 North, Range 3 East of Boise Meridian.

Reference to the attached map will disclose the relative locations of these tracts of land. By reason of the topography, when Allen uses his 1894 water upon the land described therefore, Withers receives benefit in the way of water, and return flow which finds its way into BIG ROCK and LITTLE ROCK CREEK channels above Withers' head-gates. Inasmuch as there is but seldom enough water in the two streams to fill Allen's 1917 right, he diverts a part of his 1894 water from BIG ROCK CREEK to LITTLE ROCK CREEK and carries it down that channel to various ditches which lead to the 1917 lands. The waste and return flow from BIG ROCK CREEK water, thus applied to:

Lots 1, 2, 3, 4 & 7, Section 3

does not become available for Withers' diversion and use, but flows off to the north into another depression or creek channel.

BIG ROCK CREEK water applied to:

Lots 3 or 4, Section 2

does not damage Withers materially, if at all.

On July 14, Allen was diverting 1894 water to 1917 lands and rainwater he has a right to do so, and frankly states that he expects to continue this practice.

Thus it appears the issue is clear on this point, and a citation to Allen for violation of the decrees is Withers' remedy.

PART 2.

Withers' point of diversion for his Little Rock Creek water (20 inches, priority June 1, 1868), while not described in the decree, is apparently on his own land, near the:

SW Corner of SW 1/4, Section 34, T. 14 N., Range 3 East, S. M.
He so states and has a diversion box at that point. One Ashley Bartley, owner by contract of sale of:

N 1/2 NW 1/4, Section 2, Township 13 North, Range 3 East of Police N.
is maintaining a diversion dam on his west line, where LITTLE ROCK CREEK enters the property, and diverts to his land all the LITTLE ROCK CREEK water, which reaches this point. It is my information he persisted in this practice during 1931, and has to date in 1932. On July 14, the dam was in place and a quantity of water, estimated at 12 to 15 minor's inches, was being spread onto the meadow. Allen was taking 25 inches of water from this same point, running it north along the road until it reached:

Lot 4, Section 2
where it was being used. These two diversions were made up of 5 inches of LITTLE ROCK CREEK water and 20 inches of BIG ROCK CREEK, first diverted to LITTLE ROCK CREEK channel.

If not diverted at this point, LITTLE ROCK CREEK water would continue on down the country, across the Bartley and Allen land, toward Withers' headgate and, according to him, would be of material benefit. It hardly appears probable that 5 inches would reach him now but, no doubt, the flow earlier in the season is larger and likely has greater value than at the present time.

Neither Hartley nor Thomas Worthington, prior owner of:

N^o 10th, Section 2,

were parties to the suit between Allen and Withers, so, naturally, there is no right decreed for this land, if it is entitled to one. Worthington claims a right to LITTLE ROCK CREEK water for this land, with date of first use of 1838, and is ready to defend such a claim. It should have been adjudicated at the time of the Allen vs. Withers case. Now, the matter must, apparently, become the subject of another suit. I suggest that an orderly way to initiate this would be for the Department of Reclamation to serve notice upon Hartley and Worthington that within a short reasonable period of time his dam will be cut, and the water turned down LITTLE ROCK CREEK for Withers. That would give them an opportunity to ask for a restraining order, preventing interferences with their diversion dam and, I assume, put the matter properly before the court for adjudication so it would be settled before the 1933 irrigation season.

PART 3.

As shown on the accompanying map, Allen diverts LITTLE ROCK CREEK water to LITTLE ROCK CREEK through 2 ditches. The upper one spills into LITTLE ROCK CREEK very near its head. Thus a considerable part of the channel has its natural condition disrupted and without a comparatively large number of measurements of small quantities of water, it is difficult to determine the natural flow. To eliminate as many of these uncertainties as possible, both of the LITTLE ROCK CREEK diversions to LITTLE ROCK CREEK were shut off about 4:00 P.M., July 1d. At 10:00

Rock Cr
77"
(1.54 cfs)
July measurement

A.M., July 16, LITTLE ROCK CREEK was measured, first at point "A" and found to be 5 minor's inches. It was again measured at point "D" and found to be 5 minor's inches. This last measurement is just a short distance above the point where Hartley takes the water.

At the same time, BIG ROCK CREEK was measured with no diversions above, at point "C" and found to be 77 minor's inches. All measurements were made over Cippolatti weir crests.

Five minor's inches then was the total flow of LITTLE ROCK CREEK on July 16, immediately above the Hartley land. There had been a hard rain on the 13th and 14th, which I am satisfied had served to temporarily increase the flow of all streams in that vicinity.

Allen had been diverting 36 inches into LITTLE ROCK CREEK at his upper ditch and 15 at the lower, diverting 15 inches from BIG ROCK CREEK for direct irrigation and was leaving 10 or 12 inches in the creek, and it was going down to Withers. On July 14th, Withers was getting 20 inches from BIG ROCK CREEK and 10 or 12 inches from LITTLE ROCK CREEK, or a total of 40 inches. He stated that up to about 2 weeks ago, he had all the water he wanted, but thinks he would now be getting more if Hartley had not taken any LITTLE ROCK CREEK water this year.

To expedite a determination of the natural flow of LITTLE ROCK CREEK at any time, Allen should install weirs where each of his ditches discharge into the stream and at all points where he is diverting therefrom. There are 4 of these. He has made some attempt to put

in weirs but they have filled up with sand and have been torn out until now there are insufficient facilities to determine the natural flow without taking some time. I believe he will do this readily once other matters in controversy are settled, or if a watermaster should be appointed to administer the decree.

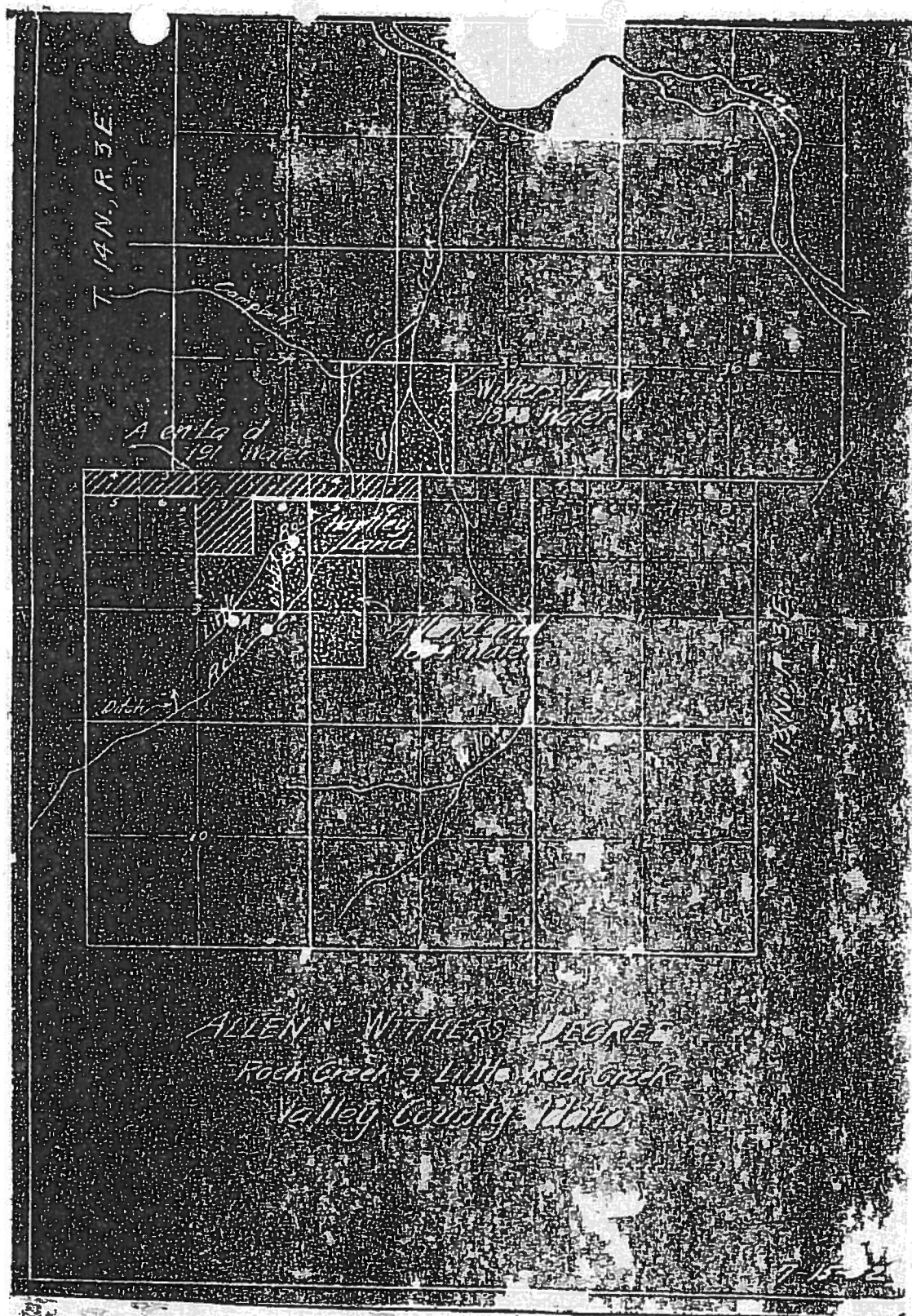
For the present, or during the rest of this irrigation year, there does not appear to be any relief feasible or action to be taken by the Department of Reclamation further than to assist in getting Bartley and Worthington into court for diversion of the LITTLE ROCK CREEK water decreed to Withers. Withers understands the whole situation now, I think, and did not suggest nor ask for anything else. However, both of the suggested court actions should be initiated immediately so they can be under way at the September term in Valley County. Otherwise, they will go over to next June, too late for relief in 1933.

After these two matters are decided, a watermaster may be desirable, depending upon the relations of the parties afterward.

It was Withers' opinion that the Cascade municipal waterworks, which has a reservoir at the head of ROCK CREEK, might be taking water to fill their reservoir, which would account for the low flow of the creek. This reservoir could be filled either before or after the beginning of the irrigation season. It should be filled before, if possible, so a watermaster could adjust this matter as well as regulate the diversions from the two streams. Both parties were agreed upon a suitable man, one ERNOS SMITH of Cascade, but inquired as to the cost. There is nothing to be gained by putting a watermaster in charge for the rest of this year.

Boise-Idaho
July 18, 1932

G. H. Carter



No Trans
6-24-57 RJ

Title of Case
Mary E. and D.K. Allen
vs
W.N. and Maud. Withers

Source Acct. Co. tid Willow Creek Page
Water Dist. 7th 20K County Valley
Judicial Dist. 24 Judge A.D.S. Ho
Date of Decree 12-10-30 Recorded in Book No. at Page No. File No. 2

NAME	AMOUNT IN FEET OR FRACTIONS OF FEET	PERCENTAGE	SECTION	DIST. REGION	TYPE	NO.	REMARKS. LAND TO BE IRRIGATED, ETC.
<u>Allen</u>	<u>160</u>	<u>6-1-94</u>					<u>SW 1/4, NW 3/4, 2, 1, 18, SW NE 1/4, NE 3-1, 12N-3E</u>
<u>W.N. and Maud</u>	<u>100</u>	<u>7-4-17</u>					<u>NE 1/4, 2, 1, 18, 1, 2, 3, 4, 1, 3-12N-3E</u>
<u>Withers</u>	<u>30</u>	<u>6-1-98</u>					<u>SE 1/4, 2, 1, 18, 1, 2, 3, 4, 1, 3-12N-3E</u>
<u>Withers</u>	<u>80</u>	<u>6-1-98</u>					<u>SE 1/4, 2, 1, 18, 1, 2, 3, 4, 1, 3-12N-3E</u>

EXHIBIT A-3

2000 OCT 31 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 65-03111X

NAME AND ADDRESS: E K ALLEN RANCHES INC
11217 HWY 55
CASCADE, ID 83611

SOURCE: UNNAMED STREAM TRIBUTARY: CASCADE RESERVOIR

QUANTITY: 2.70 CFS

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

PRIORITY DATE: 06/01/1894

POINT OF DIVERSION: T13N R03E S03 NWSE Within Valley County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-15	2.70 CFS

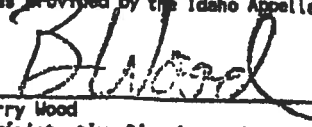
PLACE OF USE:	Irrigation	Within Valley County
	T13N R03E S03 LOT 08 (NENE)23.0	LOT 07 (NUNE)21.0
	SUNE 8.0	SENE 31.0
	83.0 Acres Total	

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

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)
) ss.
County of Ada)

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.

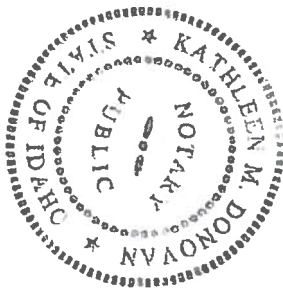
9. The Sheriff's office also gave me a CD of pictures the Sheriff's office had taken using a trail camera to photograph my diversion. Attached are the pictures from the Sheriff's office computer attached as Exhibit "C". The report indicates the Sheriff's office confirmed that the woman in the pictures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

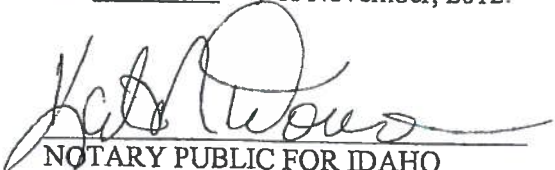
10. I would have provided this Sheriff's report in support of my motion to file a late claim but was unaware that the report had been prepared. I only learned of the report when the Sheriff's office contacted my son.

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFIDAVIT OF J. R. ALLEN** was this 21 day of November, 2012 served upon the following individuals and in the corresponding manner:

Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

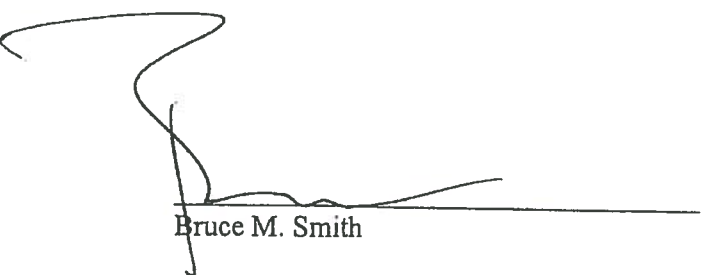
 X US Mail
 Hand Delivered
 Faxed
 Emailed

Sandra M. Chess
1200 Lizaso Ave
Boise, Idaho 83709

 US Mail
 X Hand Delivered
 Faxed
 Emailed

James T. (Jim) Bunce
PO Box 890
Cascade, Idaho 83611-0890

 X US Mail
 Hand Delivered
 Faxed
 Emailed


Bruce M. Smith

MOORE SMITH BUXTON & TURCKE, CHTD.
950 West Bannock Street, Suite 520
Boise, ID 83702
Telephone: 208-331-1800
Facsimile: 208-331-1202
BRUCE M. SMITH, ISB #3425
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

	)	
	)	
	)	Subcase No: 65-23481
	)	
	)	
In Re Snake River Basin Adjudication	)	AFFIDAVIT OF J.R. ALLEN IN
Case No. 39576	)	SUPPORT OF MOTION TO FILE
	)	LATE CLAIM
	)	
	)	
	)	
	)	
	)	
	)	
	)	

STATE OF IDAHO)
) ss.
County of Ada)

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 am the general partner in Allen Ranch LLP. Through the partnership, I own a ranch in Valley County, Idaho, near Lake Cascade. The ranch is primarily a cattle ranch on which

my father and grandfather and I have historically run cattle and now lease grazing rights to other ranchers for grazing.

3. My father and my grandfather ran the ranch before me. The family ownership dates to about 1913 when the land was homesteaded.

4. Allen Ranch has water right 65-3111X which was decreed in the Snake River Basin Adjudication for 2.7 cfs for irrigation of 83 acres during the period 4/15-10/15. The Snake River Basin Adjudication decreed right came from a claim filed in the Payette adjudication. The Payette Claim came from rights established under the 1930 Allen v Withers decree. I believe my grandfather helped file the Payette claim. Attached as Exhibit I is a copy of the Payette claim from Idaho Department of Water Resources records.

5. The Payette Adjudication claim did not include livestock as a use because, as I understand, livestock use was not required in the Payette adjudication. However livestock watering has always been a use on the ranch since my family started it.

6. The ranch has an upper area on the north end of the ranch that we call the Home Place. There is a ridge between the northern part of the ranch and the southern part.

7. The ranch has always been irrigated since it was homesteaded. As far back as I can remember, the northern part of the ranch, the Home Place, was irrigated from what was known as Little Rock Creek. The southern part of the ranch was irrigated from Rock Creek. Because Rock Creek has greater flows, my grandfather and his friends constructed a diversion and ditch to convey water from Rock Creek to Little Rock Creek. This has always been referred to as the Upper Diversion.

8. The reason water is conveyed in Little Rock Creek through the Upper Diversion is

because physically water from Rock Creek cannot be conveyed to the Home Place from lower reaches of Rock Creek because that would require water to run uphill. The Upper Diversion has been in place since at least 1915 – 1920.

9. In the 1950's, my father sold off some of the ranch and conveyed a portion of the water right to the purchasers.

10. The sold off part of the ranch was subdivided into lots and sold to individual homeowners. In the past few years some of the homeowners have begun to complain about the watering of the livestock and the diversion of water from Rock Creek to Little Rock Creek for irrigation of the Home Place.

11. The watering of livestock and conveyance of water from Rock Creek to Little Rock Creek through the Upper Diversion to irrigate the Home Place has been ongoing and continuous since long before any lots were sold or houses built.

12. Attached as Exhibit 2 is a Court Decree from 1931 that dealt with a dispute that came out of the 1930 Allen v. Withers Decree. This Decree in paragraph 2 references the Upper Diversion as being in existence in 1931. Exhibit 3 is a map from the same case showing the Upper Diversion ditch that conveys water from Rock Creek to Little Rock Creek.

13. Because of the complaints from some of the homeowners about the diversion and use of water, the Idaho Department of Water Resources began looking at the records regarding 65-3111X as well as 65-3111A, which was a split from the original right. Water right 65-3111A is held by the homeowners association for the area that was sold off. The Idaho Department of Water Resources review showed the points of diversion for both rights were incorrect in the Snake River Basin Adjudication records.

14. The Idaho Department of Water Resources has directed that while the points of diversion for those two rights are corrected, that sufficient water be left in Rock Creek to satisfy 65-3111A. This amount is .05 cfs. There is sufficient flow in Rock Creek to allow the late claim as well as fulfill the .05 cfs for 65-3111A. If there is insufficient flow, I have agreed to allow that amount to continue down Rock Creek so that the homeowner's association right is met. The late claim only involves an additional .14 cfs for livestock. Because the ranch was a homestead, watering of livestock occurred year round. That can still occur today

15. The late claim does not seek increased diversion rate, increased areas or an earlier priority date.

16. However the actual historical use of water on the ranch is also different from the period of use as decreed in 65-3111X. Irrigation, depending on any given year, starts as early as March 15 and continues after October 15, sometimes to as late as November 30. I irrigate as early and late as possible in order to get the best pasture and grazing conditions I can. This is the actual historical use for as far back as I can remember and is the basis for the late claim.

17. Sandra Chess and Jim Bunce, two homeowners, have objected to my motion to file a late claim. I had my attorney check Idaho Department of Water Resources water right records and both Ms. Chess and Mr. Bunce have groundwater rights. Neither has a water right in Rock Creek or Little Rock Creek. Their main objections appear to be based on their preference for the aesthetics of water in Rock Creek and their objection to my watering of livestock. I believe both Ms. Chess and Mr. Bunce both bought their lots and/or built their homes after the use of water by the ranch had been in existence since at least the 1920's. Since they have groundwater rights, not rights in rock Creek or Little Rock Creek I do not understand how they can be injured by allowing my late

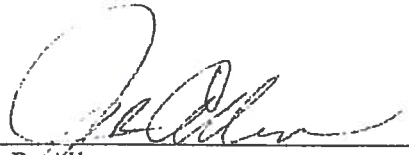
claim to be filed. Even if the late claim were recommended and decreed, they would not be injured. Their water rights from the Idaho Department of Water Resources records are attached as Exhibit 4.

18. Attached as Exhibit 5 is a letter from Dave Tuthill at Department of Water Resources explaining that livestock rights were not included in the Payette adjudication.

19. Attached as Exhibits 5 and 6 are letters from Pat Healey and Clayton Simpson, people who have worked on the irrigation ditches on the ranch over many years. These letters describe maintenance work done on the Upper Diversion that conveys water from Rock Creek to Little Rock Creek to irrigate the Home Place.

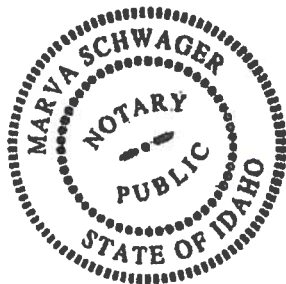
Further your affiant sayeth not.

DATED this 4th day of September, 2012.



J. R. Allen

SUBSCRIBED AND SWORN to before me this 4th day of September, 2012.





NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My Commission Expires: June 19, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFIDAVIT OF J. R. Allen** was this ____ day of September, 2012 served upon the following individuals and in the corresponding manner:

Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

____ US Mail
 x Hand Delivered
____ Faxed
____ Emailed

Sandra M. Chess
1200 Lizaso Ave
Boise, Idaho 83709

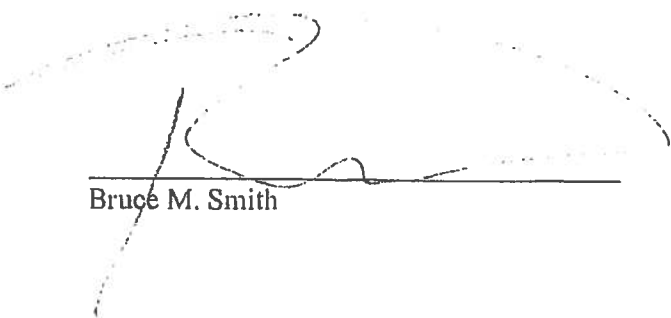
____ US Mail
 x Hand Delivered
____ Faxed
____ Emailed

James T. (Jim) Bunce
PO Box 890
Cascade, Idaho 83611-0890

 x US Mail
____ Hand Delivered
____ Faxed
____ Emailed

Allen Ranch, LLP
C/O J.R. Allen
2624 S. Inglenook Pl
Meridian, ID 83642

____ US Mail
 x Hand Delivered
____ Faxed
____ Emailed



Bruce M. Smith

EXHIBIT 1

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

EXHIBIT "A"

EXHIBIT A-5

65-3718
J. D. No. May No.
Paid Received No.

and beneficial use of the surface or ground water, of or tributary to Big Little River
The extent and nature of said claim is as follows:

(2) Describe the source of water: (Name of stream, lake, spring, etc., or groundwater) Rock Creek (Buckhorn Creek) to

Quantity	Use	Period of Use From	To
(CRS, OPD, AP, etc.)	(Domestic, International, stock, etc.)	(Mo., Day)	(Mo., Day)
20 CRS	Domestic	4/1/5	4/1/5

Quantity	Use	Period of Use From	To
(CFS, GPD, AF, etc.)	(Domestic, Irrigation, stock, etc.)	(Mo., Day)	(Mo., Day)

14. A) Point of Diversion: Give location of point where water is diverted from its source. NE W SE
 B) M additional points: 3 Two 13 Box 36

Give sizes and capacities; be as specific as possible. DIMENSIONAL GATES AND DITCHES

(6) A) Describe location of use by listing number of irrigated acres within each of the following categories. If appropriate, use the following categories. If not appropriate, place an "X" in appropriate box to show location.

[illegible]

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

(7) Effluent, sewage waste, or return water from this use is discharged into _____

(8) If you are claiming water as a member of an organization, list name of organization, _____

(9) Remarks THIS LIGHT WHEEL COMPARED WITH LIGHT 65-312. SPARK
122211 DE " MORE THAN 1000000 NICE STARS.

110) Basis of claim (Check one) ☐ A) Right based on diversion and beneficial use. (11/11/14)

B) Right decreed by court, cite title of case. ALICEA VS. WITKOWSKI
EGG-3111

☐ C) Right based on application, permit, license, or claim filed with the Idaho Department of Water Resources.

Do it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein

True and accurate to the best of (his, her, their) knowledge, belief and information.

(101)

State of _____ Organization _____ Organization _____ (Signature of spouse)

County of _____

On this _____ day of _____, 19____, before me, a notary public, personally appeared _____, (Signature of Authorized Agent), _____, in the year _____, _____.

known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they) executed the same.

Notary Public residing at _____

My commission expires **EXPIRES** **11/1/83**

EXHIBIT A

KEYPUNCHED
8-6-8-77
JWS

EXHIBIT

EXHIBIT A-5

EXHIBIT 2

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

EXHIBIT "A"

EXHIBIT A-5

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

MARY R. ALLEN)
D. K. ALLEN)
Plaintiffs)
-vs-)
W. N. WITHERS)
MAUD WITHERS)
Defendants)

DECREE

FINDINGS and CONCLUSIONS

of

COMMISSIONER OF RECLAMATION

Re: DISTRIBUTION AND USE OF WATER
UNDER DECREE OF RECLAMATION

The complaint of Defendant WITHERS in the above entitled action with reference to the distribution and use of water under the decree: After examination on the ground and from the testimony of the plaintiff and the defendant in the above entitled action, together with that of other parties having knowledge of the facts, this department has arrived at the following findings-of-fact and conclusions as to the rights, duties, and obligations of the respective parties, to-wit:

1. That the State Commissioner of Reclamation of the State of Idaho is the public official having jurisdiction over the distribution and diversion of the water under and pursuant to the terms of the decree herein;

7-15-32

EXHIBIT "A"

EXHIBIT A-5

3. That inasmuch as at the present time there are only about 40 inches of water in ROCK CREEK at Plaintiff ALLEN's upper diversion, whereas he has a prior decree for 100 inches, Defendant WITHERS has no right nor interest in or to the natural flow of ROCK CREEK at this time;
5. That LITTLE ROCK CREEK is not a tributary of ROCK CREEK and that Defendant WITHERS has a prior right under the decree to divert and use all of the water of LITTLE ROCK CREEK up to the amount of his decree, to-wit: 50 miner's inches;
4. That Plaintiff ALLEN has no right to divert and transfer water decreed to him for use upon a specific tract of land to other lands without securing a permit for such transfer from this department, which permit can be secured only by due process of law, with a showing that such diversion would not damage another appropriator;
6. That in this instance the diversion of water from the specific tract of land to which it was decreed to Plaintiff ALLEN for use upon other land would be a damage to Defendant WITHERS for the reason that in regular course and incident to the irrigation of such land said WITHERS now receives the benefit of the use of the return flow, seepage, and percolating waters from the irrigation of the land to which it was decreed, of which use he would be deprived by such change of place of use;

7-15-92

EXHIBIT "A"

EXHIBIT A-5

"A change of place of use of the water will not be permitted where to do so would damage another appropriator." Hall vs. Blackman (22 Idaho 556)

8. That one WESLEY HARTLEY, who has attempted to divert, and in fact has actually diverted, water from LITTLE ROCK CREEK to irrigate what is known as the WORTHINGTON lands, was not, nor was his predecessor-in-interest, a party to the above entitled action, and the records of this office do not disclose that he has any right, title or interest in and to the waters of LITTLE ROCK CREEK or to any of the streams mentioned in the decree, so it would seem that by his action he is liable to prosecution for unlawful diversion of water and would be liable in damages to any one injured by his acts, but that is a matter outside of the jurisdiction of this department.

It is assumed that both the plaintiff and the defendant in the above entitled action have copies of the decree in their possession and are familiar with the terms and conditions and requirements thereof, but at this time this department desires to call special attention to the following provisions of the decree:

"IV.

That each of the parties hereto, their agents, servants, employees, successors, and all persons acting in their behalf, or on behalf of either of them, be perpetually enjoined from in any manner interfering with the rights of the other parties hereto to the use of said waters, and in any manner interfering with the ditches, canals, laterals, or other means of diversion or distribution of said waters;

V.

That a miner's inch of water, as herein mentioned, is equivalent to a full 1/60 cubic foot of water per second.

7-15-32

EXHIBIT "A"

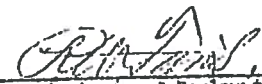
EXHIBIT A-5

VI.

That the parties to whom rights are herein allotted and their successors-in-interest shall, at their own cost and expense, install and maintain suitable and efficient headgates, controlling works, and measuring devices at their respective points of diversion from the streams from which water is diverted by them, and all waters herein allotted and decreed shall be measured at said points of diversion; said works and devices shall be built, installed and maintained in accordance with plans and specifications to be approved by the official charged by law with the duty of supervising the distribution of water; all such devices shall be of such design as to accurately measure the water diverted; all such headgates, control works, measuring devices and gauges shall, at all times, be subject to inspection by any party hereto and by the public officials or watermasters having jurisdiction over the distribution and diversion of the waters, and no dam or other obstruction to the natural flow of either of the streams from which water is taken shall be maintained so as to divert water from the channel thereof except through ditches, canals or other works provided with such headgates, control works, and measuring devices; each of the parties hereto is hereby perpetually enjoined from diverting from the channel of either of said streams any water to any ditch, conduit or other device not provided with such headgates, control works and measuring devices."

Under and pursuant to the terms and conditions of the decrees and of Section 5617, Idaho Compiled Statutes, as amended by Chapter 19 (Senate Bill No. 21), Session Laws of 1927, all parties-in-interest are hereby advised and notified to provide suitable headgates, control works, measuring devices, and gauges; failing in which, action will be taken by this department pursuant to the terms of the above section of the law.

Dated, this 25th day of May, 1931


Commissioner of Reclamation

To: D. K. ALLEN
cc: W. N. WITHERS

7-15-32

EXHIBIT "A"

EXHIBIT A-5

EXHIBIT 3

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

EXHIBIT "A"

EXHIBIT A-5

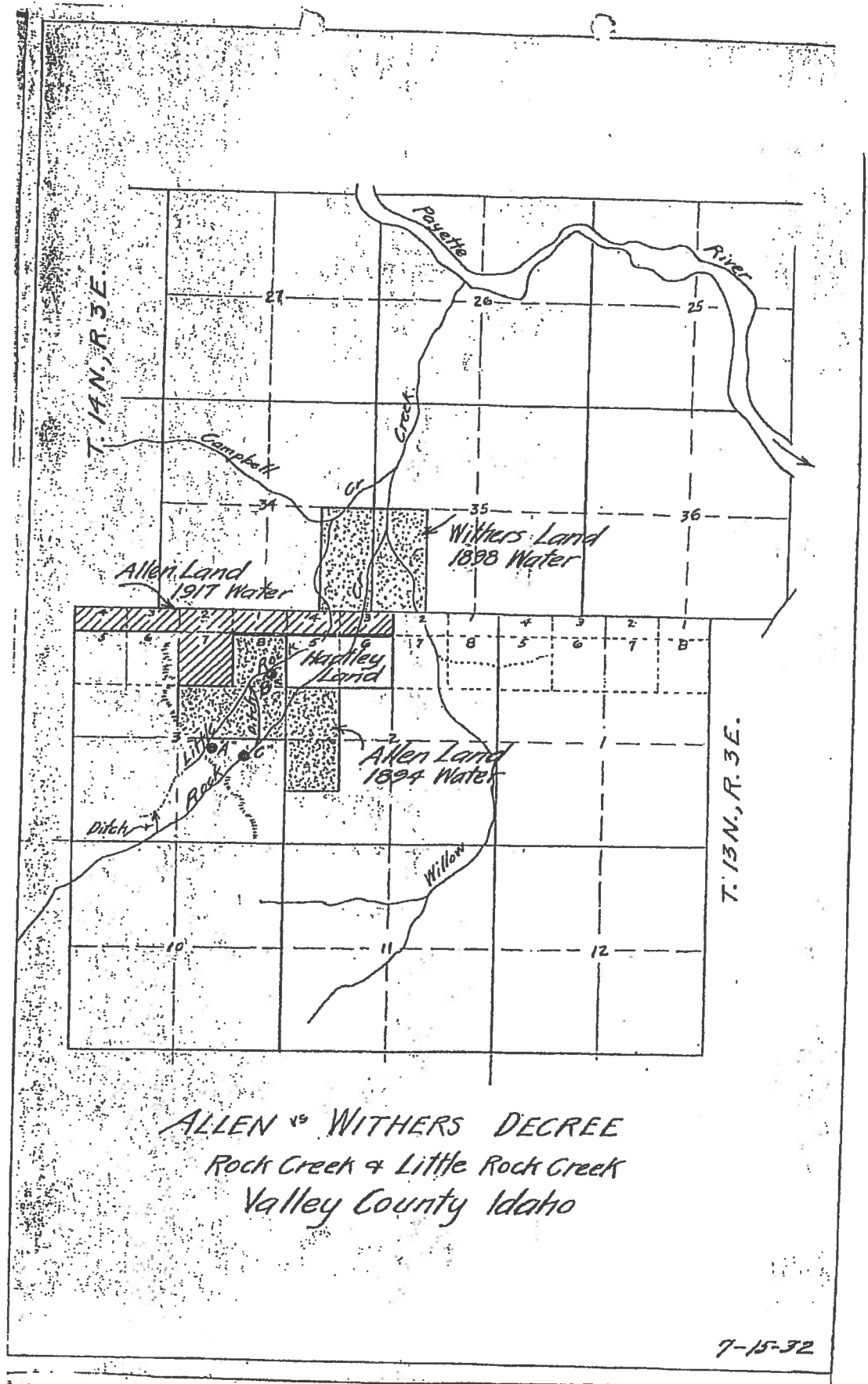


EXHIBIT "A"

EXHIBIT A-5

EXHIBIT 4

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

EXHIBIT "A"

EXHIBIT A-5

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

9/2/2012

WATER RIGHT NO. 65-17056

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	LAWRENCE J CHESS
Current Owner	SANDRA M CHESS
	1200 LIZASO AVE
	BOISE, ID 83709
	208-850-8933
Original Owner	JANE RONCHETTI
Original Owner	W J RONCHETTI
	2309 TERRACE
	CALDWELL, ID 83605
	(208)459-3513

Priority Date: 10/19/1982

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
DOMESTIC	1/01	12/31	0.02 CFS	
Total Diversion			0.02 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NWSE	Sec. 03	Township 13N	Range 03E	VALLEY County
--------------	------	---------	--------------	-----------	---------------

<http://www.idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=65&SequenceNumb...> 9/2/2012

EXHIBIT "A"

EXHIBIT A-5

Place(s) of use:

Place of Use Legal Description: DOMESTIC VALLEY County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
13N	03E	3		NWSE										

Conditions of Approval:

1.	N13	THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.
2.	N11	THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
3.		PARCEL NO. RP 000990010050A

Dates:

Licensed Date:

Decreed Date: 11/20/1998

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: AND

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

<http://www.idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=65&SequenceNumb...> 9/2/2012

EXHIBIT "A"

EXHIBIT A-5

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

9/2/2012

WATER RIGHT NO. 65-17976

Owner Type	Name and Address
Current Owner	ISABEL A BUNCE
Current Owner	JAMES T BUNCE
	2306 GRANDEE ST
	BOISE, ID 83704
	(208)375-8882

Priority Date: 05/31/1983

Basis: Decreed

Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
DOMESTIC	1/01	12/31	0.04 CFS	
Total Diversion			0.04 CFS	

Location of Point(s) of Diversion:

GROUND WATER	SWNE	Sec. 03	Township 13N	Range 03E	VALLEY County
--------------	------	---------	--------------	-----------	---------------

Place(s) of use:

Place of Use Legal Description: DOMESTIC VALLEY County

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

Conditions of Approval:

1.	N13	THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.
2.	N11	THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
3.		PARCEL NO. RP000050020560A PROPERTY ALSO KNOWN AS LOT 56, ALLENS 4TH SUBDIVISION #2.

Dates:

Licensed Date:

Decreed Date: 11/27/1998

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: OR

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

<http://www.idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=65&SequenceNumb...> 9/2/2012

EXHIBIT "A"

EXHIBIT A-5

EXHIBIT 5

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

EXHIBIT "A"

EXHIBIT A-5



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,

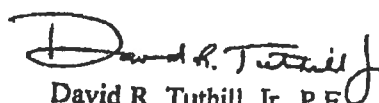

David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

EXHIBIT "A"

EXHIBIT A-5

EXHIBIT 6

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

EXHIBIT "A"

EXHIBIT A-5

8/24/2012

To whom it may concern

20 yrs ago Garrison Backhoe was hired to fix a washout for the Allen Ranch.

I was the operator that fixed and re-diverted the water back into the original creek that feed the water to the Homeland of the Allen Ranch.

Pat Deady

EXHIBIT 7

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

EXHIBIT "A"

EXHIBIT A-5

8/23/2012

To Whom it may concern:

- I have been Allen Ranch's backhoe operator for the past 10-12 years. I went up on West Mountain to what is called Rock Creek to where the Allen's have a water right for what is known as their home ranch which is an early homestead ranch. In looking at the diversion in Rock Creek, it is the only place that I can see that water can be diverted to irrigate the north end of the home ranch. There is an existing creek known as Little Rock Creek that has been there for according to my estimations several decades.

Simpson Excavation

~~Clayton Simpson~~
Clayton Simpson

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 right 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 ~~Westra~~ 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

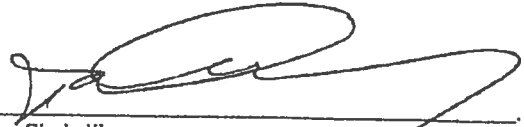
This appeared to be the same female that Allen is suspecting of damaging and /or removing the diversion dam, according to his description of her. Positive identification will try to be made using the photograph.

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



24.87 inHg↑ 66°F 08/26/11 07:28 PM 5555555555

EXHIBIT "C"

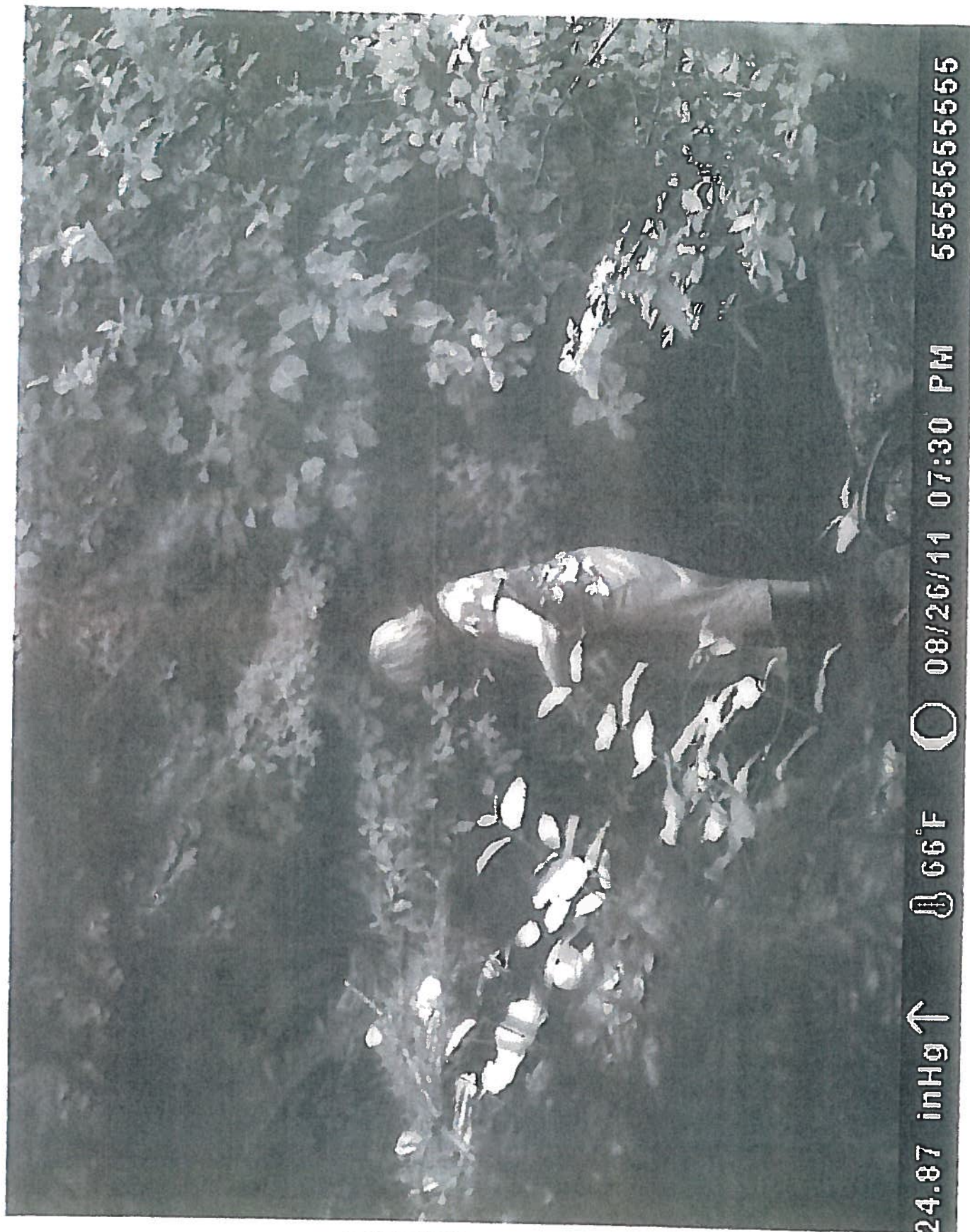


EXHIBIT "C"

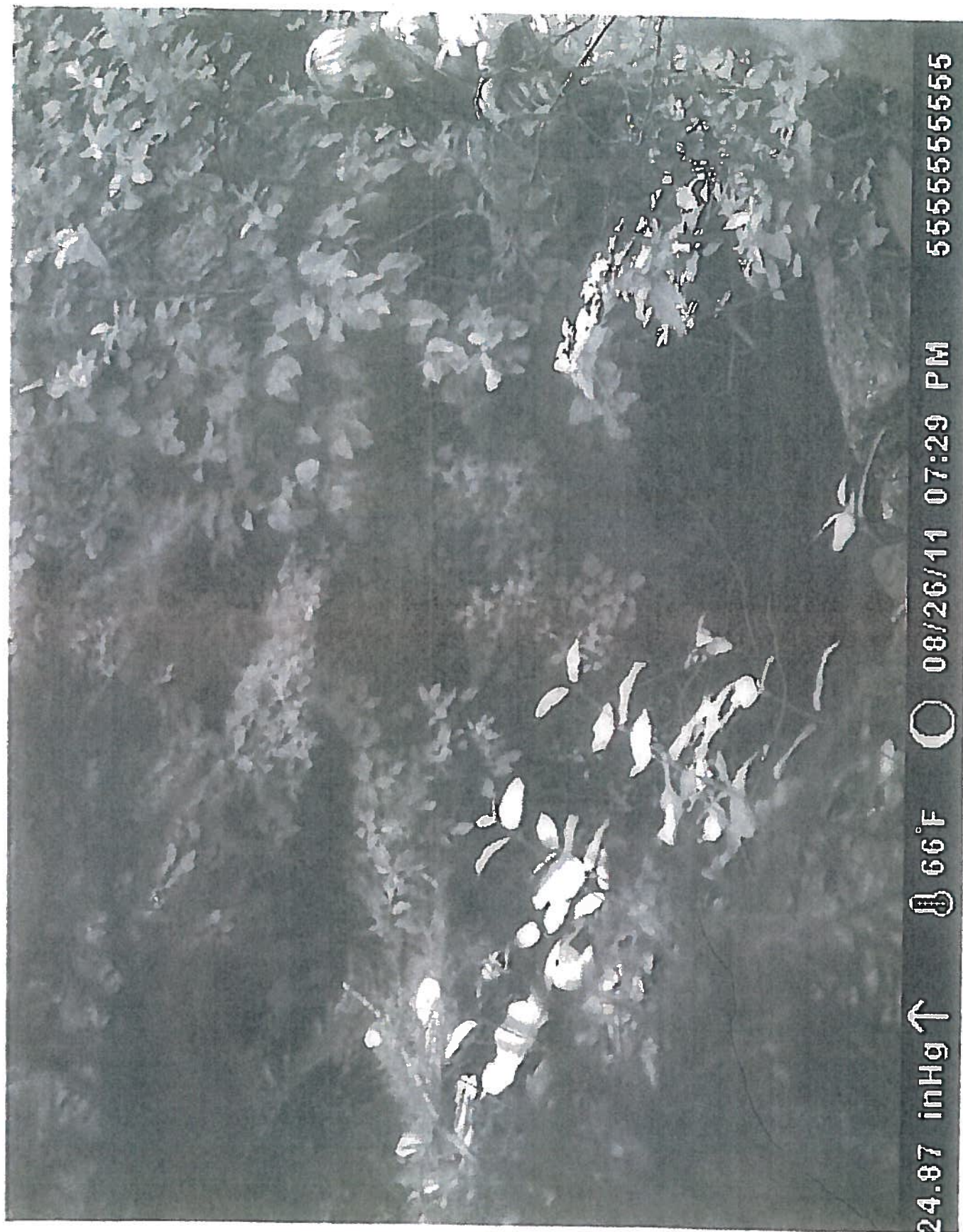


EXHIBIT "C"



24.87 inHg ↑ 66°F 08/26/11 07:30 PM 5555555555

EXHIBIT "C"



24.87 inHg ↑ 66°F 08/26/11 07:29 PM 5555555555

EXHIBIT "C"



EXHIBIT "C"

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: 65-3111X

**AFFIDAVIT OF J.R. ALLEN IN
SUPPORT OF MOTION TO
REOPEN DECREE TO CORRECT
POINT OF DIVERSION**

STATE OF IDAHO)
) ss.
County of Ada)

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 am the general partner in Allen Ranch LLP. Through the partnership, I own a ranch in Valley County, Idaho, near Lake Cascade. The ranch is primarily a cattle ranch on which my father and grandfather and I have historically run cattle and now lease grazing rights to other ranchers for grazing.

3. My father and my grandfather ran the ranch before me. The family ownership dates

to about 1913 when the land was homesteaded.

4. Allen Ranch has water right 65-3111X which was decreed in the Snake River Basin Adjudication for 2.7 cfs for irrigation of 83 acres during the period 4/15-10/15. The Snake River Basin Adjudication decreed right came from a claim originally filed in the Payette adjudication. The Payette Claim was based on rights established under the 1930 *Allen v. Withers* decree. I believe my father or grandfather helped file the Payette claim. Attached as Exhibit 1 is a copy of the Payette claim from Idaho Department of Water Resources records.

5. The ranch has an upper area on the north end of the ranch that we call the Home Place. There is a ridge between the northern part of the ranch and the southern part.

6. The ranch has always been irrigated since it was homesteaded. As far back as I can remember, the northern part of the ranch, the Home Place, was irrigated from what was known as Little Rock Creek. The southern part of the ranch was irrigated from Rock Creek. Because Rock Creek has greater flows, my grandfather and his friends constructed a diversion and ditch to convey water from Rock Creek to Little Rock Creek. This has always been referred to as the Upper Diversion. The water from Rock Creek diverted through the Upper Diversion then went down Little Rock Creek to irrigate the Home Place and to water livestock.

7. The reason water is conveyed in Little Rock Creek through the Upper Diversion is because, physically, water from Rock Creek cannot be conveyed to the Home Place from the lower reaches of Rock Creek because that would require water to run uphill. The Upper Diversion has been in place since at least 1915 – 1920.

8. In the 1950's, my father sold off some of the ranch and conveyed a small portion of the water right to the purchasers.

9. The sold off part of the ranch was subdivided into lots and sold to individual homeowners. In the past few years some of the homeowners have begun to complain about the diversion of water from Rock Creek to Little Rock Creek for irrigation of the Home Place because they want water left in Rock Creek for their enjoyment notwithstanding the impacts on my ranch. Because of these complaints, I have undertaken to establish that the Upper Diversion is in fact a historical diversion point that has been used since my family homesteaded. My investigation has revealed an error in the claim in the Payette Adjudication in that the Upper Point of diversion was left off. This error was then continued through into the Snake River Basin Adjudication so that the final decree left off the point of diversion.

10. I believe my grandfather or father was involved in submitting the original claim in the Payette Adjudication. However, neither of them would likely have been able to distinguish the legal description of the point of diversion from the actual physical location. They would not likely have had the tools or resources to verify a legal description in those days. However, both of them would definitely know the physical location since they built and worked on the diversion. Since learning of this error, I have worked diligently to try to figure out exactly what happened that would have caused the point of diversion to be omitted. I have talked to a couple of long term residents who confirmed the location and existence of diversion and sought the help of Dr. Tuthill who was in charge of the Payette Adjudication.

11. The conveyance of water from Rock Creek to Little Rock Creek through the Upper Diversion to irrigate the Home Place and water livestock has been ongoing and continuous since long before any lots were sold or houses built. It has continued to the present.

12. Attached as Exhibit 2 is a Court Decree from 1931 known as the *Allen vs. Withers*

Decree. This Decree in paragraph 2 references the Upper Diversion as being in existence in 1931. Exhibit 3 is a map referencing the same case showing the Upper Diversion ditch that conveys water from Rock Creek to Little Rock Creek.

13. Because of the complaints from some of the homeowners about the diversion and use of water, the Idaho Department of Water Resources began looking at the records regarding 65-3111X as well as Water Right 65-3111A, which was a split from the original right for the ranch. Water Right 65-3111A is held by the homeowners association for the area of the ranch that was sold off. The Idaho Department of Water Resources review showed the points of diversion for both rights were incorrect.

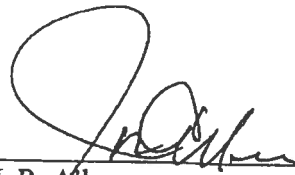
14. I am requesting the Court to set aside the decree for my water right for the limited purpose of correcting the point of diversion so that the historical point of diversion is on the decree. The point of diversion is critical to the historical and present irrigation of the ranch and the watering of livestock.

15. Attached as Exhibits 4 and 5 are Affidavits from Bill Leslie and John Kwader both long time residents of Cascade who attest to the existence of the point of diversion and their personal knowledge of it.

16. Attached as Exhibit 6 is the Affidavit of Dr. David Tutill who has also helped with my investigation about how the point of diversion was erroneously omitted. Dr. Tutill was actually in charge of the Payette Adjudication for IDWR. Dr. Tutill has determined the point of diversion was simply left off the Payette and SRBA claims and decrees by error. Further, there is no evidence that the omission was anything but an error. I am asking the Court to help correct this error by allowing the point of diversion to be included on my water right.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 29 day of August, 2013.



J. R. Allen

SUBSCRIBED AND SWORN to before me this 29th day of August, 2013.





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

25-3711
 J. D. Ho
 May 1941
 East
 West

832-17

(i) **Date of priority:** (When was the water first applied to a beneficial use, or priority date of the claim?)

(3) Describe the purpose for which the water has been used and the time during the year when

Quantity	Unit	Period of Use
1	1000	1000

Quantity _____ (EFPB, GPO, APJ) _____ (Domestic, Imported, etc.) _____ Period of Use _____

32 14 3.7 TOTAL QUANTITY CLAIMED: 49.7

(d) ICF, BPO, AFJ - Case of RFP-100-1, Jan. 1978.

(e) Phosphate Chloride location of solid where water is diverted from its common

Net: 3 Twp: 13 Rsd: 13R B.M. additional:

B) Describe means of diversion of water (Pump and pipeline, well, diversion dam, road)

Give dates and variables; be as specific as possible. 1946-1947

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre

[illegible]

10. If water is used for other than irrigation, fully describe that use, being as specific as possible:

(3) Effluent, sewage waste, or return water from this use is discharged into _____

(8) If you are claiming water as a member of an organization, list name of organization.

(9) Remarks: Tree Pruned When Climbed With Right 65° 1/2 Scale

→ permitted in 1968 02 1968 3 #F/N/ach

(10) Basis of claim (Check one) ☒ A) Right decreed by court, cite title of case. Alison Vs. Williams

☐ Right based on application, permit, license, or claim filed with the Idaho Department of

He knows that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein

true and accurate to the best of (his, her, their) knowledge.

11-13-45

Organization: Department of Defense Department of Defense

State of _____

County of _____ (Signature of Authorized Agent)
On this _____ day of _____, 19____, at the year _____, before me

_____ a notary public, personally appeared
 _____ known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, the

corporation, partnership or _____ executed the same.

Notary Public holding II
 My commission expires _____

0 1001 6 10 1978

KEYPUNCHED

EXHIBIT 1

IN THE DISTRICT COURT OF THE DISTRICT JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

MARY R. ALLEN
D. K. ALLEN
Plaintiffs

-VS-

W. H. WITHERS
MAUD WITHERS
Defendants

DECEASED

FINDINGS and CONCLUSIONS

of

COMMISSIONER OF RECLAMATION

Re: DISTRIBUTION AND USE OF WATER
UNDER DECREE OF THE DISTRICT COURT OF THE DISTRICT JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

The complaint of Defendant WITHERS in the above entitled action with reference to the distribution and use of water under the decree. After examination on the ground and from the testimony of the plaintiff and the defendant in the above entitled action, together with that of other parties having knowledge of the facts, this department has arrived at the following findings-of-fact and conclusions as to the rights, duties, and obligations of the respective parties, to-wit:

1. That the State Commissioner of Reclamation of the State of Idaho is the public official having jurisdiction over the distribution and diversion of the water under and pursuant to the terms of the decree herein;

EXHIBIT 2

7-15-52

2. That inasmuch as at the present time there are only about 40 inches of water in ROCK CREEK at Plaintiff ALLEN's upper diversion, whereas he has a prior decree for 100 inches, Defendant WITHERS has no right nor interest in or to the natural flow of ROCK CREEK at this time;
3. That LITTLE ROCK CREEK is not a tributary of ROCK CREEK and that Defendant WITHERS has a prior right under the decrees to divert and use all of the water of LITTLE ROCK CREEK up to the amount of his decree, to-wit: 20 miner's inches;
4. That Plaintiff ALLEN has no right to divert and transfer water decreed to him for use upon a specific tract of land to other lands without securing a permit for such transfer from this department, which permit can be secured only by due process of law, with a showing that such diversion would not damage another appropriator;
5. That in this instance the diversion of water from the specific tract of land to which it was decreed to Plaintiff ALLEN for use upon other land would be a damage to Defendant WITHERS for the reason that in regular course and incident to the irrigation of such land said WITHERS now receives the benefit of the use of the return flow, seepage, and percolating waters from the irrigation of the land to which it was decreed, of which use he would be deprived by such change of place of use;

EXHIBIT 2

7-15-52

"A change of place of use of the water will not be permitted where to do so would damage another appropriator." Hall -vs- Blackman (22 Idaho 586)

6. That one WESLEY MARTLEY, who has attempted to divert, and in fact has actually diverted, water from LITTLE ROCK CREEK to irrigate what is known as the WASHINGTON lands, was not, nor was his predecessor-in-interest, a party to the above entitled action, and the records of this office do not disclose that he has any right, title or interest in and to the waters of LITTLE ROCK CREEK or to any of the streams mentioned in the decree, so it would seem that by his action he is liable to prosecution for unlawful diversion of water and would be liable in damages to any one injured by his acts, but that is a matter outside of the jurisdiction of this department.

It is assumed that both the plaintiff and the defendant in the above entitled action have copies of the decree in their possession and are familiar with the terms and conditions and requirements thereof, but at this time this department desires to call special attention to the following provisions of the decree:

"IV,

That each of the parties hereto, their agents, servants, employees, successors, and all persons acting in their behalf, or on behalf of either of them, be perpetually enjoined from in any manner interfering with the rights of the other parties hereto to the use of said waters, and in any manner interfering with the ditches, canals, laterals, or other means of diversion or distribution of said waters;

V.

That a miner's inch of water, as herein mentioned, is equivalent to a full 1/60 cubic foot of water per second.

EXHIBIT 2

7-15-32

VI.

That the parties to whom rights are herein allotted and their successors-in-interest shall, at their own cost and expense, install and maintain suitable and efficient headgates, controlling works, and measuring devices at their respective points of diversion from the streams from which water is diverted by them, and all waters herein allotted and decreed shall be measured at said points of diversion; said works and devices shall be built, installed and maintained in accordance with plans and specifications to be approved by the official charged by law with the duty of supervising the distribution of water; all such devices shall be of such design as to accurately measure the water diverted; all such headgates, control works, measuring devices and gauges shall, at all times, be subject to inspection by any party hereto and by the public officials or watermasters having jurisdiction over the distribution and diversion of the waters, and no dam or other obstruction to the natural flow of either of the streams from which water is taken shall be maintained so as to divert water from the channel thereof except through ditches, canals or other works provided with such headgates, control works, and measuring devices; each of the parties hereto is hereby perpetually enjoined from diverting from the channel of either of said streams any water to any ditch, conduit or other device not provided with such headgates, control works and measuring devices."

Under and pursuant to the terms and conditions of the decrees and of Section 6617, Idaho Compiled Statutes, as amended by Chapter 19 (Senate Bill No. 21), Session Laws of 1927, all parties-in-interest are hereby advised and notified to provide suitable headgates, control works, measuring devices, and gauges; failing in which, action will be taken by this Department pursuant to the terms of the above section of the law.

Dated, this 25th day of May, 1931


Commissioner of Reclamation

To: D. K. ALLEN
cc: W. H. WITHERS

7-15-32

EXHIBIT 2

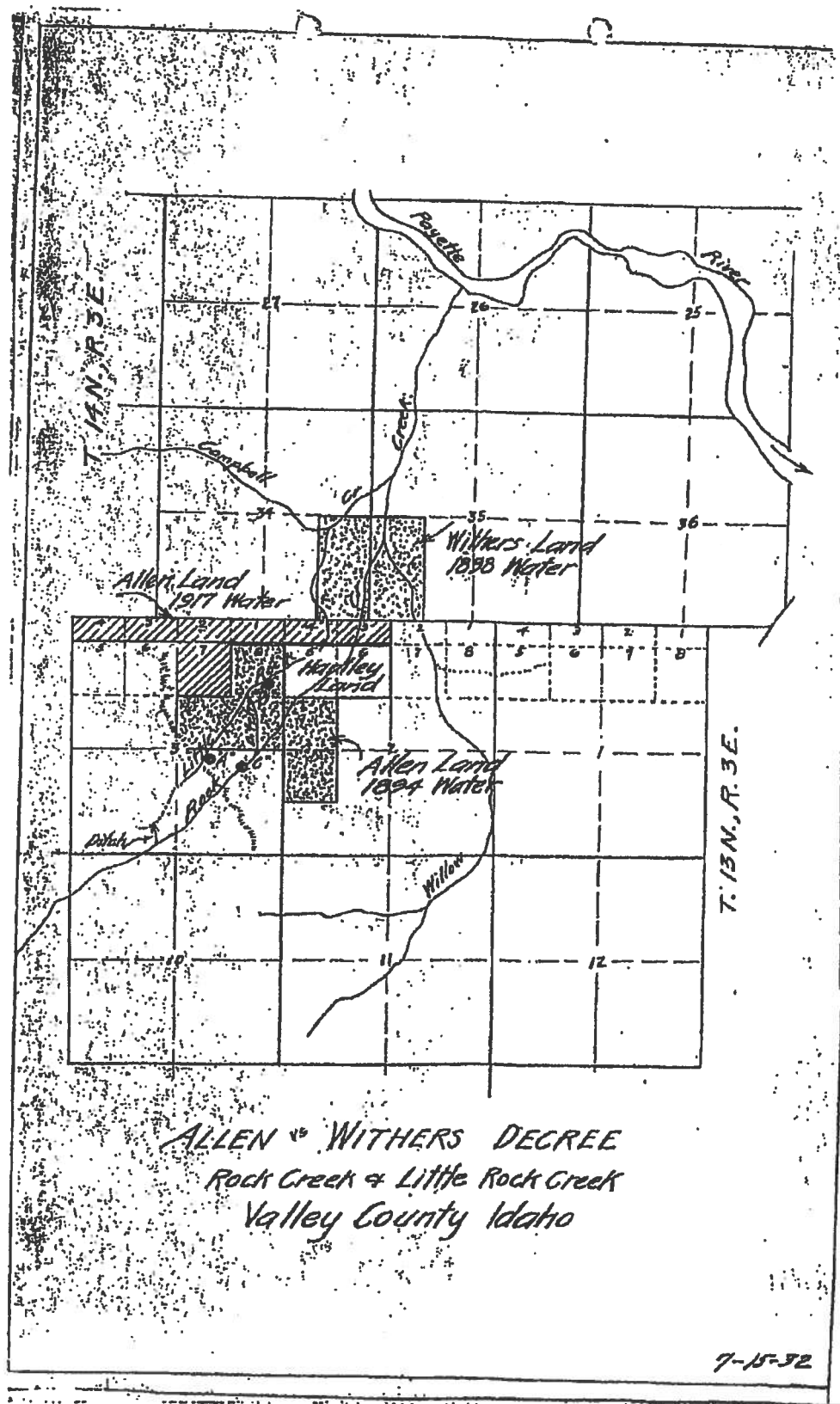


EXHIBIT 3

MOORE SMITH BUXTON & TURCKE, CHTD.
950 West Bannock Street, Suite 520
Boise, ID 83702
Telephone: 208-331-1800
Facsimile: 208-331-1202
BRUCE M. SMITH, ISB #3425
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)
) ss.
County of Ada)

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 am the general partner in Allen Ranch LLP. Through the partnership, I own a ranch in Valley County, Idaho, near Lake Cascade. The ranch is primarily a cattle ranch on which

my father and grandfather and I have historically run cattle and now lease grazing rights to other ranchers for grazing.

3. My father and my grandfather ran the ranch before me. The family ownership dates to about 1913 when the land was homesteaded.

4. Allen Ranch has water right 65-3111X which was decreed in the Snake River Basin Adjudication for 2.7 cfs for irrigation of 83 acres during the period 4/15-10/15. The Snake River Basin Adjudication decreed right came from a claim filed in the Payette adjudication. The Payette Claim came from rights established under the 1930 Allen v Withers decree. I believe my grandfather helped file the Payette claim. Attached as Exhibit 1 is a copy of the Payette claim from Idaho Department of Water Resources records.

5. The Payette Adjudication claim did not include livestock as a use because, as I understand, livestock use was not required in the Payette adjudication. However livestock watering has always been a use on the ranch since my family started it.

6. The ranch has an upper area on the north end of the ranch that we call the Home Place. There is a ridge between the northern part of the ranch and the southern part.

7. The ranch has always been irrigated since it was homesteaded. As far back as I can remember, the northern part of the ranch, the Home Place, was irrigated from what was known as Little Rock Creek. The southern part of the ranch was irrigated from Rock Creek. Because Rock Creek has greater flows, my grandfather and his friends constructed a diversion and ditch to convey water from Rock Creek to Little Rock Creek. This has always been referred to as the Upper Diversion.

8. The reason water is conveyed in Little Rock Creek through the Upper Diversion is

because physically water from Rock Creek cannot be conveyed to the Home Place from lower reaches of Rock Creek because that would require water to run uphill. The Upper Diversion has been in place since at least 1915 – 1920.

9. In the 1950's, my father sold off some of the ranch and conveyed a portion of the water right to the purchasers.

10. The sold off part of the ranch was subdivided into lots and sold to individual homeowners. In the past few years some of the homeowners have begun to complain about the watering of the livestock and the diversion of water from Rock Creek to Little Rock Creek for irrigation of the Home Place.

11. The watering of livestock and conveyance of water from Rock Creek to Little Rock Creek through the Upper Diversion to irrigate the Home Place has been ongoing and continuous since long before any lots were sold or houses built.

12. Attached as Exhibit 2 is a Court Decree from 1931 that dealt with a dispute that came out of the 1930 Allen v. Withers Decree. This Decree in paragraph 2 references the Upper Diversion as being in existence in 1931. Exhibit 3 is a map from the same case showing the Upper Diversion ditch that conveys water from Rock Creek to Little Rock Creek.

13. Because of the complaints from some of the homeowners about the diversion and use of water, the Idaho Department of Water Resources began looking at the records regarding 65-3111X as well as 65-3111A, which was a split from the original right. Water right 65-3111A is held by the homeowners association for the area that was sold off. The Idaho Department of Water Resources review showed the points of diversion for both rights were incorrect in the Snake River Basin Adjudication records.

14. The Idaho Department of Water Resources has directed that while the points of diversion for those two rights are corrected, that sufficient water be left in Rock Creek to satisfy 65-3111A. This amount is .05 cfs. There is sufficient flow in Rock Creek to allow the late claim as well as fulfill the .05 cfs for 65-3111A. If there is insufficient flow, I have agreed to allow that amount to continue down Rock Creek so that the homeowner's association right is met. The late claim only involves an additional .14 cfs for livestock. Because the ranch was a homestead, watering of livestock occurred year round. That can still occur today

15. The late claim does not seek increased diversion rate, increased areas or an earlier priority date.

16. However the actual historical use of water on the ranch is also different from the period of use as decreed in 65-3111X. Irrigation, depending on any given year, starts as early as March 15 and continues after October 15, sometimes to as late as November 30. I irrigate as early and late as possible in order to get the best pasture and grazing conditions I can. This is the actual historical use for as far back as I can remember and is the basis for the late claim.

17. Sandra Chess and Jim Bunce, two homeowners, have objected to my motion to file a late claim. I had my attorney check Idaho Department of Water Resources water right records and both Ms. Chess and Mr. Bunce have groundwater rights. Neither has a water right in Rock Creek or Little Rock Creek. Their main objections appear to be based on their preference for the aesthetics of water in Rock Creek and their objection to my watering of livestock. I believe both Ms. Chess and Mr. Bunce both bought their lots and/or built their homes after the use of water by the ranch had been in existence since at least the 1920's. Since they have groundwater rights, not rights in rock Creek or Little Rock Creek I do not understand how they can be injured by allowing my late

claim to be filed. Even if the late claim were recommended and decreed, they would not be injured. Their water rights from the Idaho Department of Water Resources records are attached as Exhibit 4.

18. Attached as Exhibit 5 is a letter from Dave Tuthill at Department of Water Resources explaining that livestock rights were not included in the Payette adjudication.

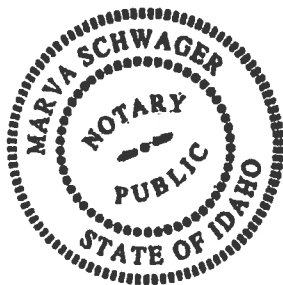
19. Attached as Exhibits 5 and 6 are letters from Pat Healey and Clayton Simpson, people who have worked on the irrigation ditches on the ranch over many years. These letters describe maintenance work done on the Upper Diversion that conveys water from Rock Creek to Little Rock Creek to irrigate the Home Place.

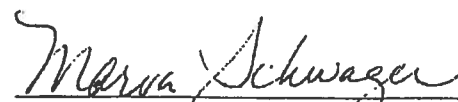
Further your affiant sayeth not.

DATED this 4th day of September, 2012.


J. R. Allen

SUBSCRIBED AND SWORN to before me this 4th day of September, 2012.




NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My Commission Expires: June 19, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFIDAVIT OF J. R. Allen** was this ____ day of September, 2012 served upon the following individuals and in the corresponding manner:

Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

____ US Mail
 x Hand Delivered
____ Faxed
____ Emailed

Sandra M. Chess
1200 Lizaso Ave
Boise, Idaho 83709

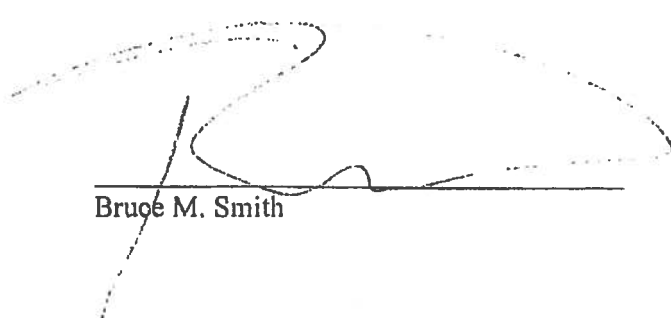
____ US Mail
 x Hand Delivered
____ Faxed
____ Emailed

James T. (Jim) Bunce
PO Box 890
Cascade, Idaho 83611-0890

 x US Mail
____ Hand Delivered
____ Faxed
____ Emailed

Allen Ranch, LLP
C/O J.R. Allen
2624 S. Inglenook Pl
Meridian, ID 83642

____ US Mail
 x Hand Delivered
____ Faxed
____ Emailed



Bruce M. Smith

EXHIBIT 1

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

EXHIBIT A-7

EXHIBIT 2

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

EXHIBIT A-7

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

MARY R. ALLEN
D. K. ALLEN
Plaintiffs)

-vs-

W. H. WITHERS
MAUD WITHERS
Defendants)

123456

FINDINGS and CONCLUSIONS

of

COMMISSIONER OF RECLAMATION

Re: DISTRIBUTION AND USE OF WATER
under decree of court of the State of Idaho

The complaint of Defendant WITHERS in the above entitled action with reference to the distribution and use of water under the decree: After examination on the ground and from the testimony of the plaintiff and the defendant in the above entitled action, together with that of other parties having knowledge of the facts, this department has arrived at the following findings-of-fact and conclusions as to the rights, duties, and obligations of the respective parties, to-wit:

1. That the State Commissioner of Reclamation of the State of Idaho is the public official having jurisdiction over the distribution and diversion of the water under and pursuant to the terms of the decree herein;

7-15-52

2. That inasmuch as at the present time there are only about 40 inches of water in ROCK CREEK at Plaintiff ALLEN's upper diversion, whereas he has a prior decree for 160 inches, Defendant WITHERS has no right nor interest in or to the natural flow of ROCK CREEK at this time;
3. That LITTLE ROCK CREEK is not a tributary of ROCK CREEK and that Defendant WITHERS has a prior right under the decree to divert and use all of the water of LITTLE ROCK CREEK up to the amount of his decree, to-wit: 50 miner's inches;
4. That Plaintiff ALLEN has no right to divert and transfer water decreed to him for use upon a specific tract of land to other lands without securing a permit for such transfer from this department, which permit can be secured only by due process of law, with a showing that such diversion would not damage another appropriator;
5. That in this instance the diversion of water from the specific tract of land to which it was decreed to Plaintiff ALLEN for use upon other land would be a damage to Defendant WITHERS for the reason that in regular course and incident to the irrigation of such land said WITHERS now receives the benefit of the use of the return flow, seepage, and percolating waters from the irrigation of the land to which it was decreed, of which use he would be deprived by such change of place of use;

7-15-52

"A change of place of use of the water will not be permitted where to do so would damage another appropriator." Hall -vs- Blackman (22 Idaho 556)

6. That one WESLEY HARTLEY, who has attempted to divert, and in fact has actually diverted, water from LITTLE ROCK CREEK to irrigate what is known as the WORTHINGTON lands, was not, nor was his predecessor-in-interest, a party to the above entitled action, and the records of this office do not disclose that he has any right, title or interest in and to the waters of LITTLE ROCK CREEK or to any of the stream mentioned in the decree, so it would seem that by his action he is liable to prosecution for unlawful diversion of water and would be liable in damages to any one injured by his acts, but that is a matter outside of the jurisdiction of this department.

It is assumed that both the plaintiff and the defendant in the above entitled action have copies of the decree in their possession and are familiar with the terms and conditions and requirements thereof, but at this time this department desires to call special attention to the following provisions of the decree:

"IV.

That each of the parties hereto, their agents, servants, employees, successors, and all persons acting in their behalf, or on behalf of either of them, be perpetually enjoined from in any manner interfering with the rights of the other parties hereto to the use of said waters, and in any manner interfering with the ditches, canals, laterals, or other means of diversion or distribution of said waters;

V.

That a miner's inch of water, as herein mentioned, is equivalent to a full 1/50 cubic foot of water per second.

7-15-72

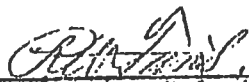
EXHIBIT A-7

VI.

That the parties to whom rights are herein allotted and their successors-in-interest shall, at their own cost and expense, install and maintain suitable and efficient headgates, controlling works, and measuring devices at their respective points of diversion from the streams from which water is diverted by them, and all waters herein allotted and decreed shall be measured at said points of diversion; said works and devices shall be built, installed and maintained in accordance with plans and specifications to be approved by the official charged by law with the duty of supervising the distribution of water; all such devices shall be of such design as to accurately measure the water diversion; all such headgates, control works, measuring devices and gauges shall, at all times, be subject to inspection by any party hereto and by the public officials or watermasters having jurisdiction over the distribution and diversion of the waters, and no dam or other obstruction to the natural flow of either of the streams from which water is taken shall be maintained so as to divert water from the channel thereof except through ditches, canals or other works provided with such headgates, control works, and measuring devices; each of the parties hereto is hereby perpetually enjoined from diverting from the channel of either of said streams any water to any ditch, conduit or other device not provided with such headgates, control works and measuring devices."

Under and pursuant to the terms and conditions of the decree and of Section 5617, Idaho Compiled Statutes, as amended by Chapter 19 (Senate Bill No. 21), Session Laws of 1927, all parties-in-interest are hereby advised and notified to provide suitable headgates, control works, measuring devices, and gauges; failing in which, action will be taken by this department pursuant to the terms of the above section of the law.

Dated, this 25th day of May, 1931


Commissioner of Reclamation

To: D. K. ALLEN
cc: W. M. WITHERS

7-15-32

EXHIBIT A-7

EXHIBIT 3

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

EXHIBIT A-7

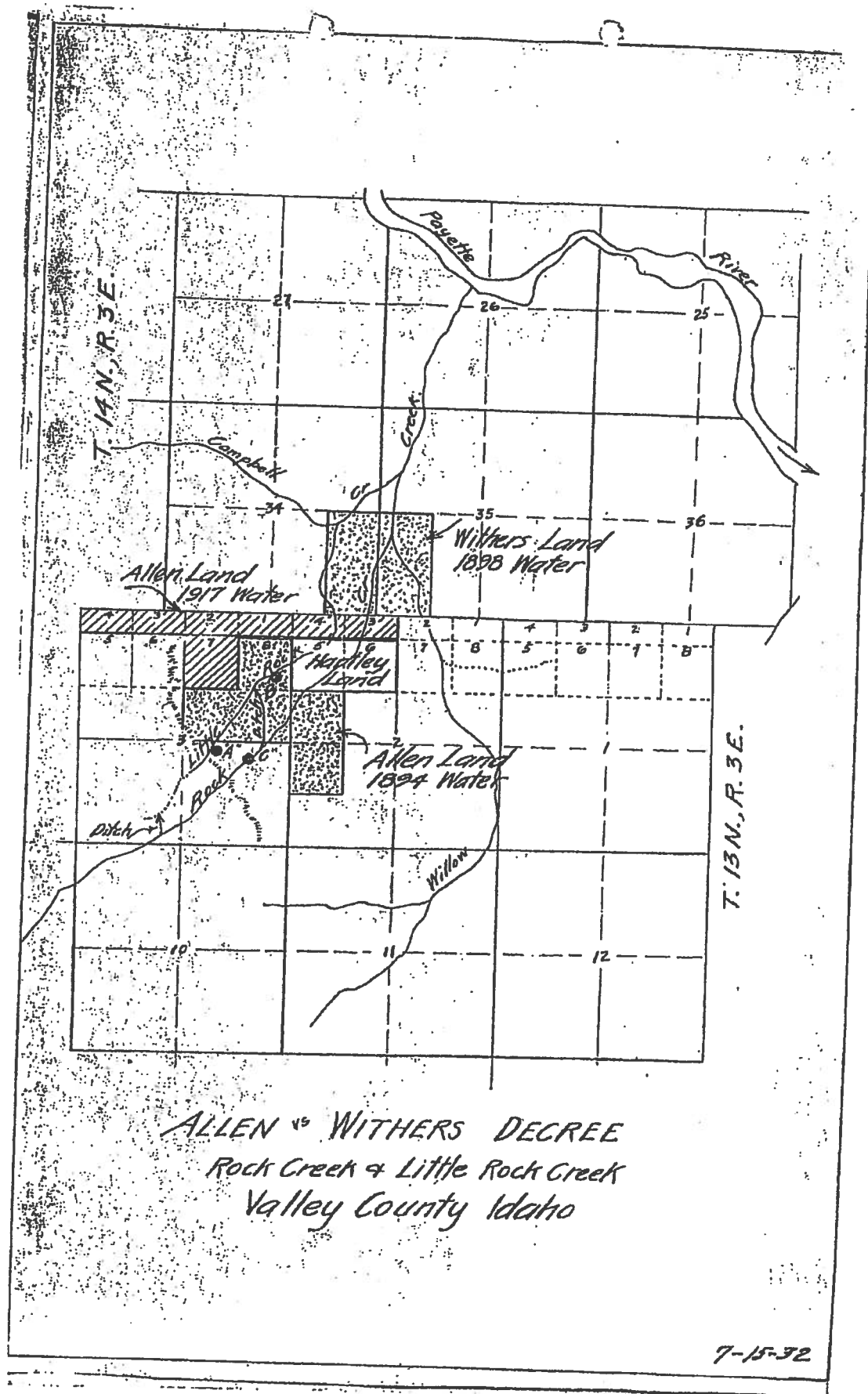


EXHIBIT 4

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

EXHIBIT A-7

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

9/2/2012

WATER RIGHT NO. 65-17056

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	LAWRENCE J CHESS
Current Owner	SANDRA M CHESS
	1200 LIZASO AVE
	BOISE, ID 83709
	208-850-8933
Original Owner	JANE RONCHETTI
Original Owner	W J RONCHETTI
	2309 TERRACE
	CALDWELL, ID 83605
	(208)459-3513

Priority Date: 10/19/1982

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
DOMESTIC	1/01	12/31	0.02 CFS	
Total Diversion			0.02 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NWSE	Sec. 03	Township 13N	Range 03E	VALLEY County
--------------	------	---------	--------------	-----------	---------------

Place(s) of use:

Place of Use Legal Description: DOMESTIC VALLEY County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
13N	03E	3		NWSE										

Conditions of Approval:

1.	N13	THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.
2.	N11	THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
3.		PARCEL NO. RP 000990010050A

Dates:

Licensed Date:

Decreed Date: 11/20/1998

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: AND

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

9/2/2012

WATER RIGHT NO. 65-17976

Owner Type	Name and Address
Current Owner	ISABEL A BUNCE
Current Owner	JAMES T BUNCE
	2306 GRANDEE ST
	BOISE, ID 83704
	(208)375-8882

Priority Date: 05/31/1983

Basis: Decreed

Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
DOMESTIC	1/01	12/31	0.04 CFS	
Total Diversion			0.04 CFS	

Location of Point(s) of Diversion:

GROUND WATER	SWNE	Sec. 03	Township 13N	Range 03E	VALLEY County
--------------	------	---------	--------------	-----------	---------------

Place(s) of use:

Place of Use Legal Description: DOMESTIC VALLEY County

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

Conditions of Approval:

1.	N13	THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.
2.	N11	THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
3.		PARCEL NO. RP000050020560A PROPERTY ALSO KNOWN AS LOT 56, ALLENS 4TH SUBDIVISION #2.

Dates:

Licensed Date:

Decreed Date: 11/27/1998

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: OR

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

EXHIBIT 5

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

EXHIBIT A-7



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,

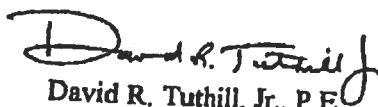

David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

EXHIBIT A-7

EXHIBIT 6

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

EXHIBIT A-7

8/24/2012

To whom it may concern

20 yrs ago Garrison Backhoe was hired to fix a washout for the Allen Ranch.

I was the operator that fixed and re-diverted the water back into the original creek that feed the water to the Homeland of the Allen Ranch.

Pat Deady

EXHIBIT 7

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

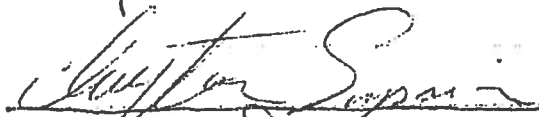
EXHIBIT A-7

8/23/2012

To Whom it may concern:

- I have been Allen Ranch's backhoe operator for the past 10-12 years. I went up on West Mountain to what is called Rock Creek to where the Allen's have a water right for what is known as their home ranch which is an early homestead ranch. In looking at the diversion in Rock Creek, it is the only place that I can see that water can be diverted to irrigate the north end of the home ranch. There is an existing creek known as Little Rock Creek that has been there for, according to my estimations, several decades.

Simpson Excavation


Clayton Simpson



IDAHO SECRETARY OF STATE Viewing Business Entity

Ben Ysursa, Secretary of State

[[New Search](#)] [[Back to Summary](#)]
[[Get a certificate of filing for ALLEN RANCH, LLLP](#)]

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 INGLENOOK PL
MERIDIAN, ID 83642

File Number: L373

Date of Last Annual Report: 14 Apr 2012

Original Filing:

Filed 17 Jun 1983 CERTIFICATE
OF LP

[[Help Me Print/View TIFF](#)]

[View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Amendments:

Amendment Filed 12 Aug 2005 AMENDED &
RESTATED

[[Help Me Print/View TIFF](#)]

[View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Amendment Filed 13 Nov 2007 NAME CHANGED
TO ALLEN
RANCH, LLLP

[View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Annual Reports:

Report for year 2012 ANNUAL REPORT

[[Help Me Print/View TIFF](#)]

[View Document Online](#)

Report for year 2011 ANNUAL
REPORT

[View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Report for year 2010 ANNUAL REPORT

[View Document Online](#)

Report for year 2009 ANNUAL
REPORT

[View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Report for year 2008 ANNUAL
REPORT

[View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Report for year 2007 ANNUAL
REPORT

[View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

[Idaho Secretary of State's Main Page](#)

[State of Idaho Home Page](#)

Comments, questions or suggestions can be emailed to: sosinfo@sos.idaho.gov

SCANNED

JUN 26 2012

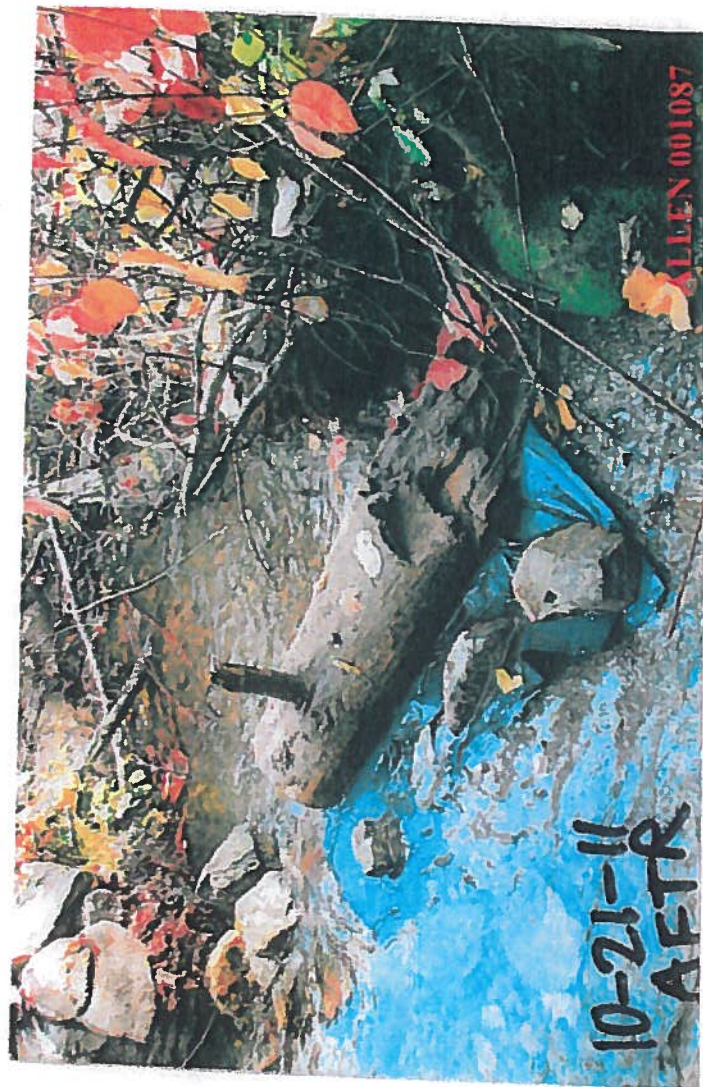
GYL, hit 2A

5/24/2012

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 GENERAL PARTNER	Name J.R. ALLEN JR ALLEN CATTLE CO INC	Street or PO Address 2624 S INGLENOOK PL	City MERIDIAN	State ID	Country USA
					Postal Code 83642
5. Organized Under the Laws of: ID L 373		6. Annual Report must be signed.* Signature: Jr Allen Name (type or print): Jr Allen Date: 04/14/2012 Title: General Partner			
Processed 04/14/2012		* Electronically provided signatures are accepted as original signatures.			

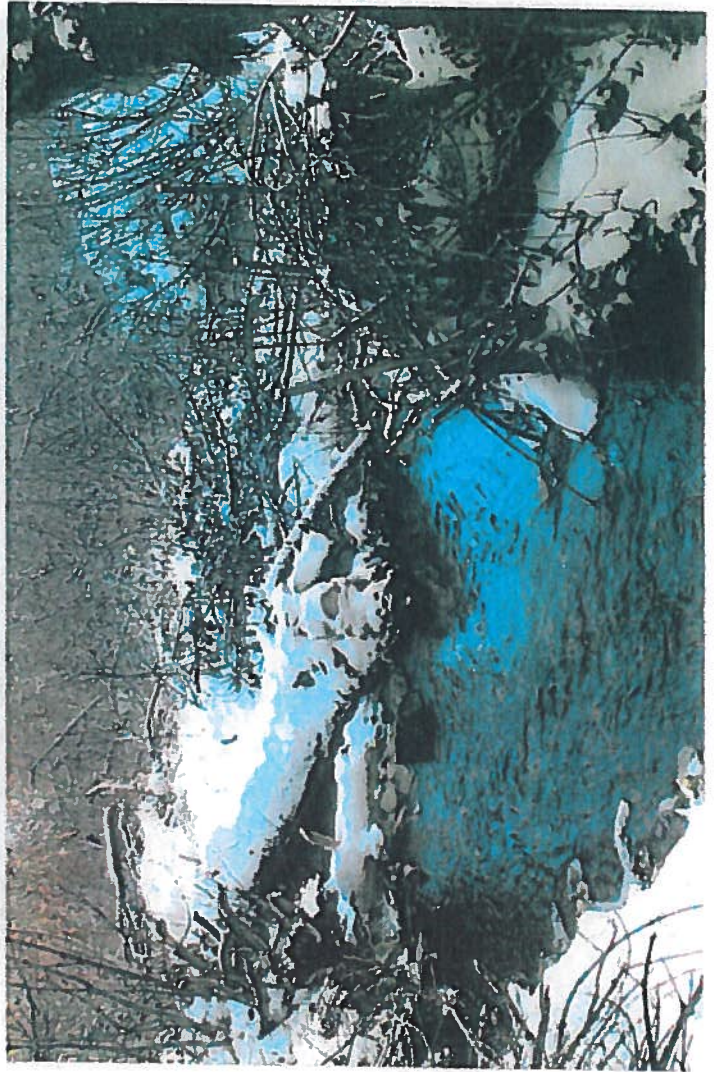
EXHIBIT A-8
SCANNED

JUN 26 2012





ALLEN 001088

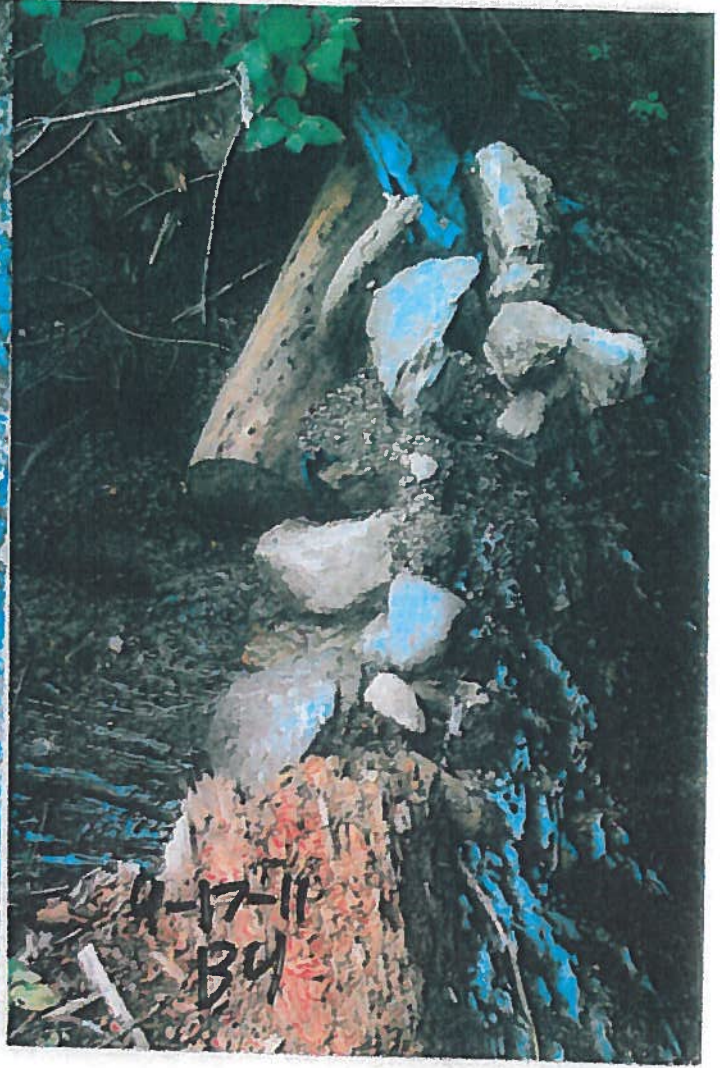


ALLEN 001089







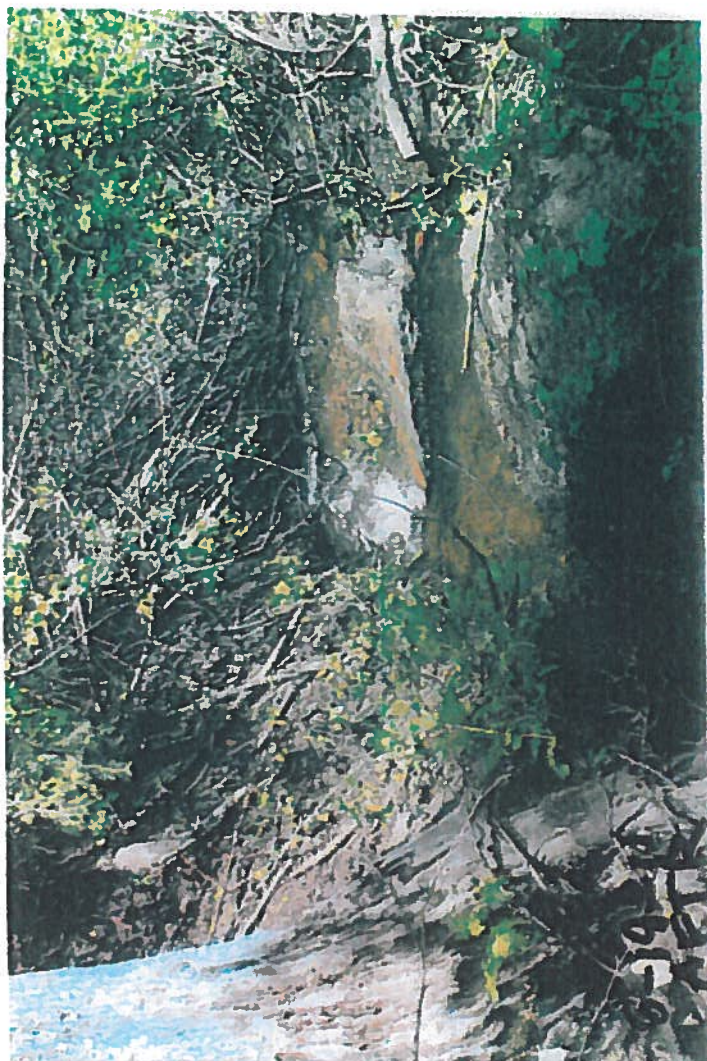


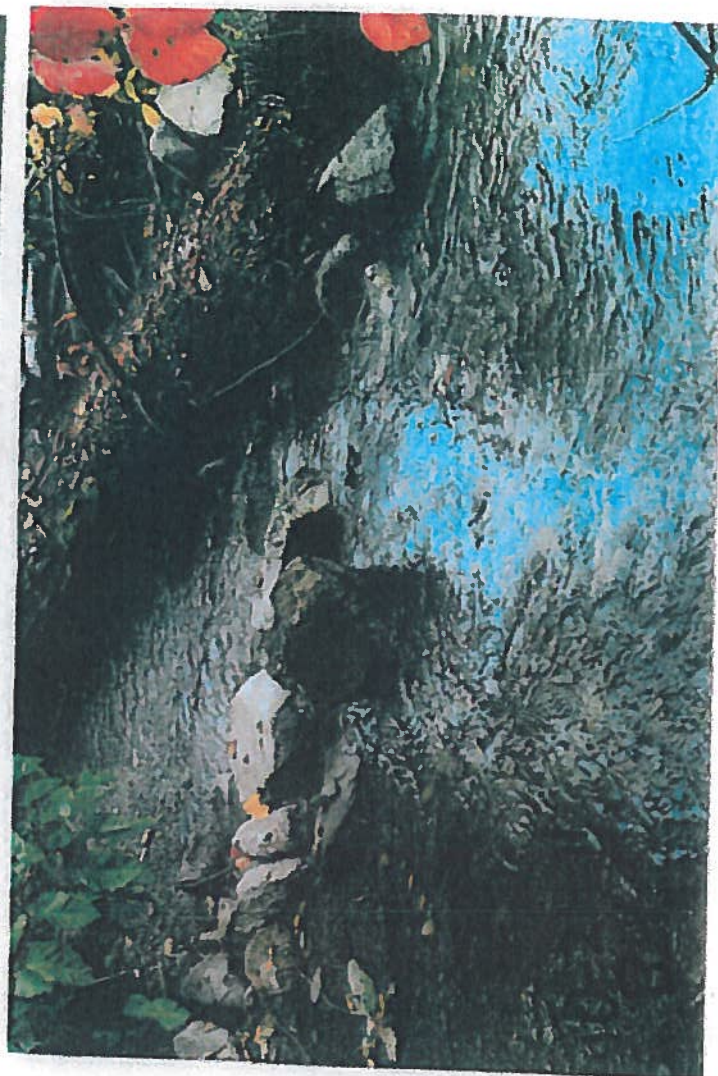
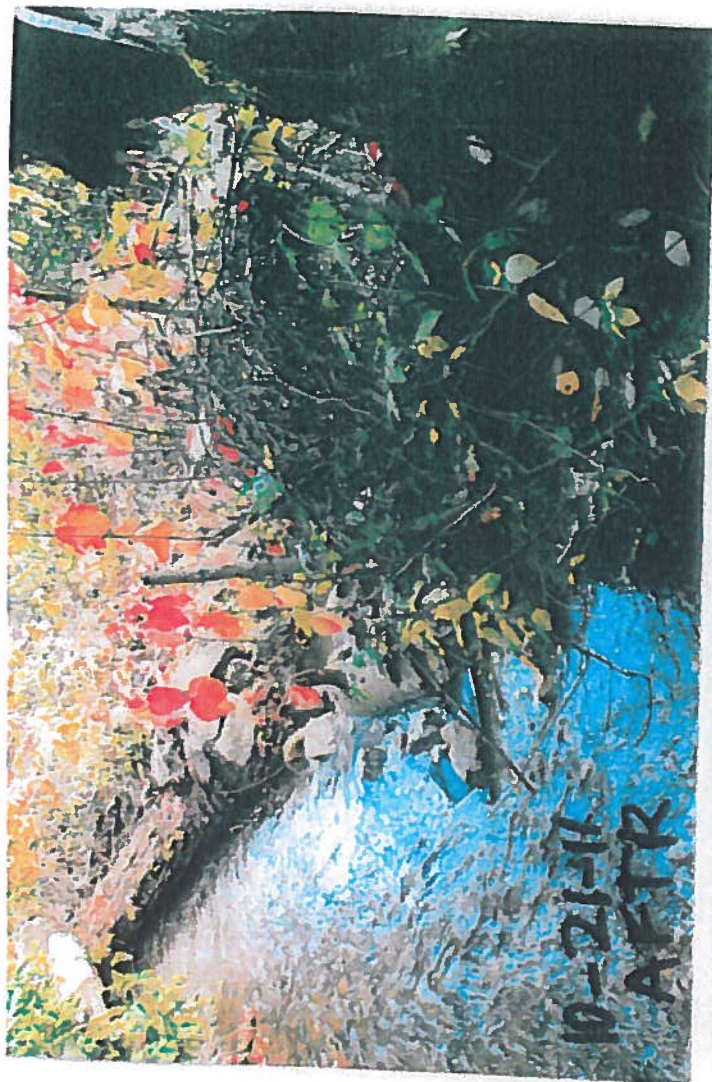


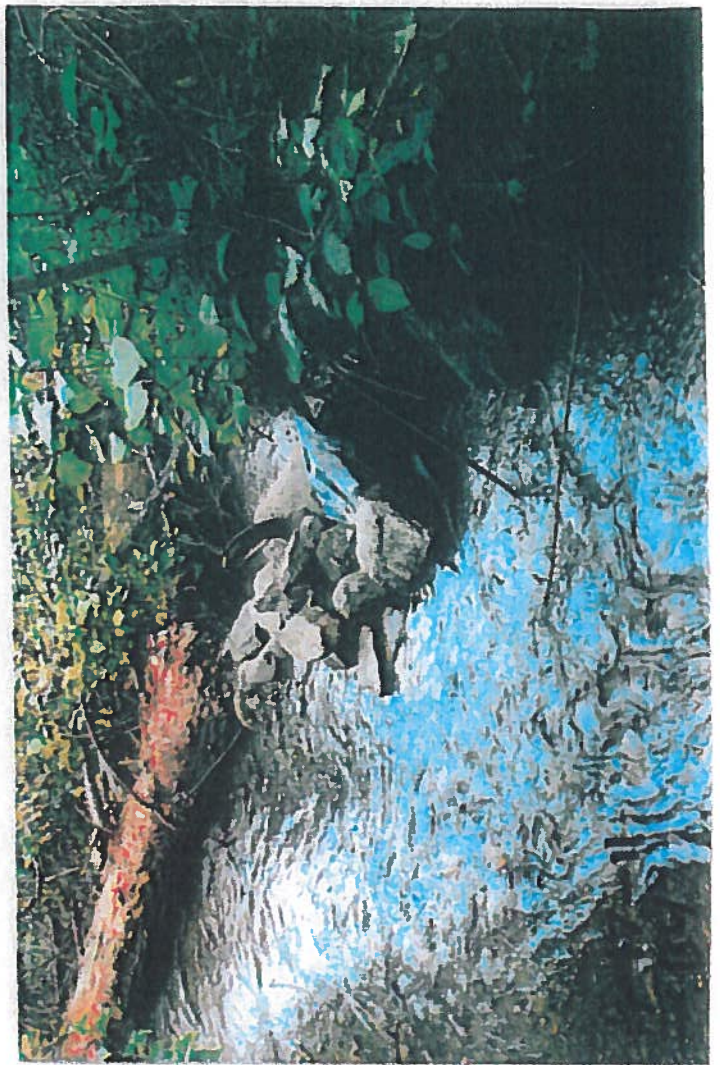












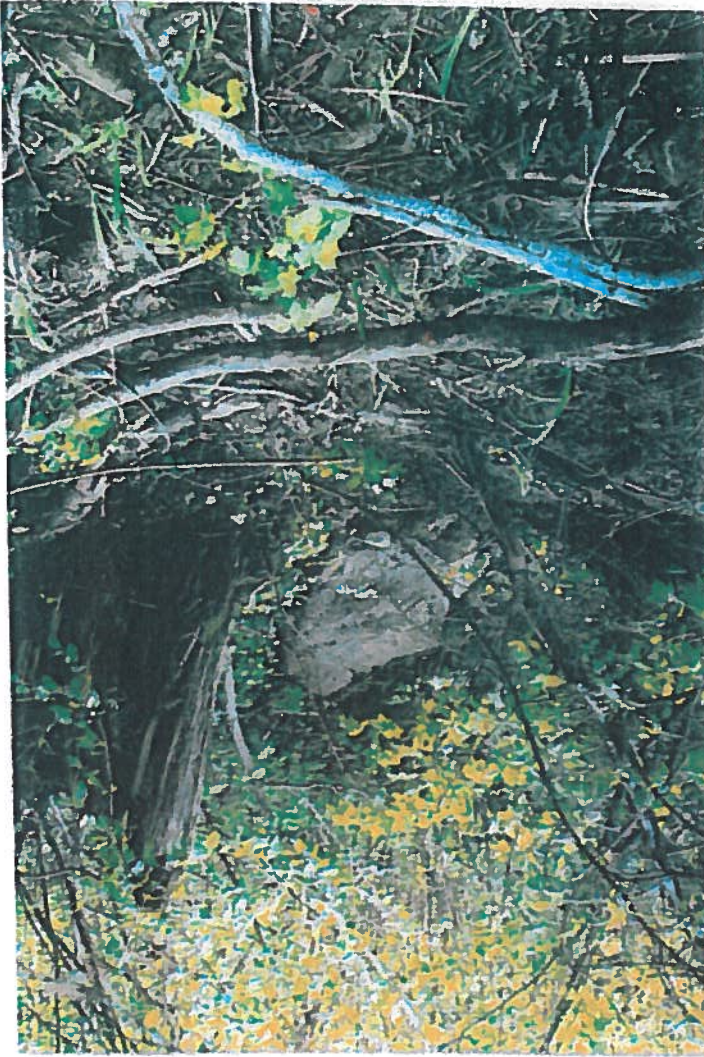
















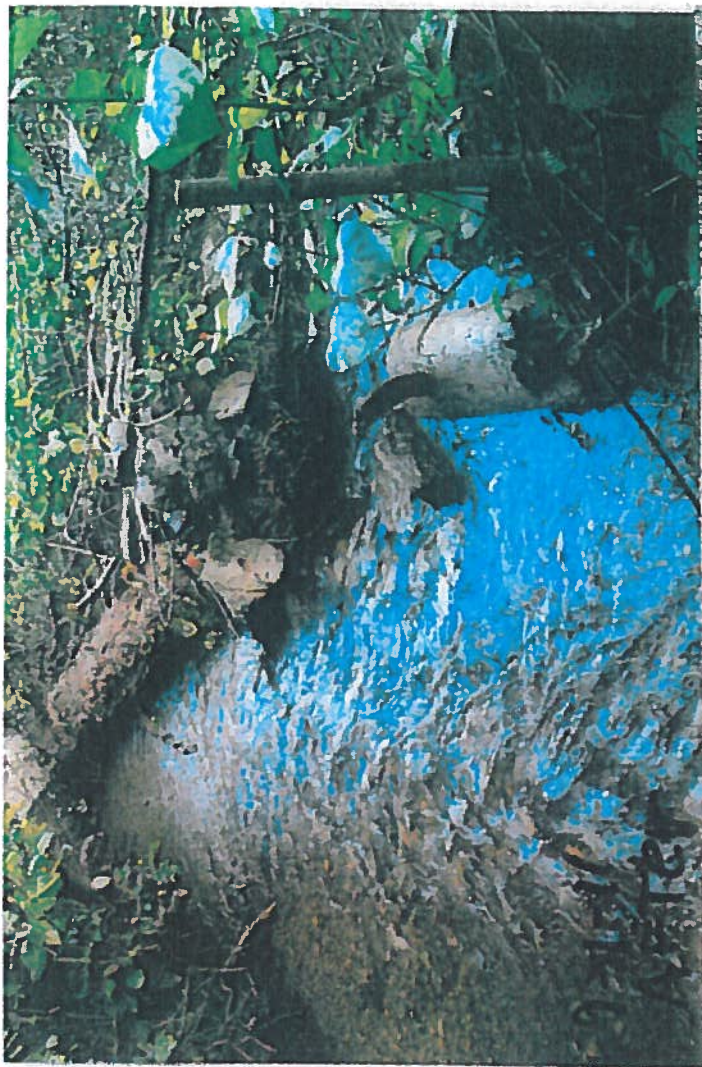








EXHIBIT A-9
ALLEN 001112

West Mountain Water Association, Inc.
P.O. Box 388
Cascade, ID. 83611
(208) 382-4288
(C) (208)-315-1628

June 19, 2011

Gary Spackman
Interim Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Re: Water Right Transfer 77209 and Water Diversion from Rock Creek aka Richard Creek

Dear Mr. Spackman:

We appreciate your response to our questions and concerns, in your letter dated June 16, 2011.

Portions of your letter are inconsistent with our notes from meetings we have attended with your department. That being said, it is important that we are now aware that your decision process is partially based on misled assumptions.

You mentioned we should contact you if your letter did not sufficiently address our questions. The follow questions remain unanswered; what is the delay in the processing of our Water Right Transfer application 77209? This application was filed and the required fee paid on April 27, 2011. I have not been notified of any corrections or questions.

The records of West Mountain Water Assoc. document our historical point of diversion, which has never physically changed locations. We are not seeking to change the point of diversion for Water Right 65-03111A, simply correct the records with **IDWR**.

We do not wish to take up your time with any additional details of our concerns about Mr. Allen's transfer application and application for new right, as we trust proper procedures will be followed and we have an opportunity to discuss the issues and present evidence during a hearing.

EXHIBIT A-10

no 6 10 c

Gary Spackman
IDWR
June 19, 2011
Page 2

If water is diverted from the upper diversion in the amount that affects our water supply or enjoyment of the creek, we will notify you.

Regards,

Jim Bunce
Director, West Mountain Water Association, Inc.

cc: Western Region, IDWR
Bruce Smith - Attorney for Allen Ranch
Stephen Goodson - Governor's Office



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

June 16, 2011

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Jim Bunce
West Mountain Water Association, Inc.
PO Box 388
Cascade, ID 83611

RECEIVED

JUN 17 2011

MSB & T, CTD.

Re: Water Right Transfer 77209 and Water Diversions from Rock Creek

Dear Mr. Bunce:

This letter is a follow up to our meeting in Boise on Tuesday May 3, 2011, regarding the transfer filing in the name of West Mountain Water Association, Inc. ("the Association") and your concerns about water diversions from Rock Creek (aka Richard Creek). I appreciated meeting with you and your wife, Isabel, and Jerry Dye to discuss these matters.

I hope our meeting was helpful to you in answering questions regarding the initial data entry of the Association's transfer application. As I indicated in our meeting, the Department will correspond with you when the application is advertised so that you may verify the information on the Department website in addition to the legal notice in the McCall newspaper.

In our meeting, and in prior discussions with me and Department staff, you have raised concerns about water diversions from Rock Creek and flooding problems experienced by some members of the Association resulting from an unmaintained irrigation ditch. As we discussed, the Department does not have jurisdiction to enforce laws associated with ditch easements and maintenance issues and liability for property damages associated with flooding. I suggested a starting point would be to research county records for recorded easements.

The Association's transfer 77209 seeks to correct the record for the Association's water right no. 65-3111A to describe the historic point of diversion used by the Association. The historic point of diversion is located upstream of West Mountain Road and is described correctly under the Association's other water right no. 65-13088. You specifically asked if the Association will be allowed to continue diverting water under water right no. 65-3111A at the historic location while transfer 77209 is being processed.

You also asked what the Department intends to do about another water user's diversion of water from Rock Creek at a point located just upstream of the Association's historic diversion point. As you know, Allen Ranch LLLP ("Allen Ranch") has filed a transfer application to add that point of diversion ("the Allen Ranch upper diversion") to its water right no. 65-3111X. I understand that Allen Ranch claims that the location is a historic point of diversion and ditch

EXHIBIT A-11

Jim Bunce
June 16, 2011
Page 2

used under water right no. 65-3111X. Department staff visited the site last November in response to a separate complaint and observed that the ditch has been in place for many years, but could not confirm how long it has been actively used.

I am reluctant to prohibit the Association, while its transfer application is pending, from diverting water for domestic purposes at its historic location in this circumstance. The diversion is not a new diversion and the discrepancy from the recorded water right (65-3111A) appears to be the result of an error when the right was described in the Payette and Snake River Basin adjudications.

Regarding the Allen Ranch upper diversion, it is not clear to me when the diversion and ditch originated, but I will assume it is not a new diversion and ditch and may also be the result of an error in description. Allen Ranch may continue diverting from its upper diversion under water right no. 65-3111X while the Allen Ranch transfer application is pending; however, Allen Ranch must ensure a sufficient amount of water will pass downstream in Rock Creek to satisfy the Association's water right at its historic point of diversion.

I hope this letter sufficiently addresses your questions. Please contact me if you have additional questions or concerns.

Sincerely,



Gary Spackman
Interim Director

cc: Western Region, IDWR
Bruce Smith – Attorney for Allen Ranch ✓
Stephen Goodson – Governor's Office

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
CHERESE D. MCLAIN
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

July 25, 2012

John Westra
Idaho Department of Water Resources
Western Regional Office
2375 Airport Way
Boise, ID 83705-5082

Re: J.R. Allen/Rock Creek/Little Rock Creek

Dear John:

This letter is to inform the Idaho Department of Water Resources that unknown parties have again modified the flows at the confluence of Rock Creek and Little Rock Creek. The modification was apparently done between July 17 and July 24, 2012 by damming up Little Rock Creek and directing almost all flow down Rock Creek. Director Spackman issued a letter that provides for maintenance of that the status quo while the various proceedings to resolve the diversion point issues are underway. This action by the unnamed parties has resulted in depriving Mr. Allen of his water in Little Rock Creek. Whoever did this did so in direct contradiction of Director Spackman's direction. Mr. Allen is going to try to fix the modification and restore the flows to their previous condition.

Please contact me if you have questions.

Sincerely,

MOORE SMITH BUXTON & TURCKE CHARTERED

Bruce M. Smith

BMS/ems

Cc: client
Jeff Peppersack

EXHIBIT A-12

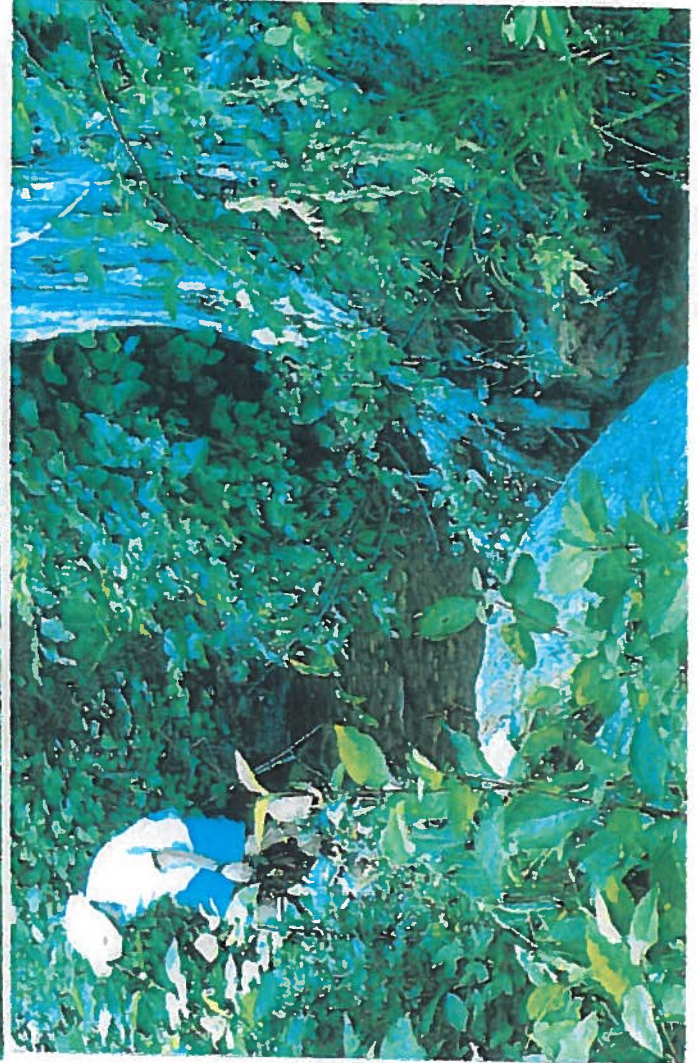
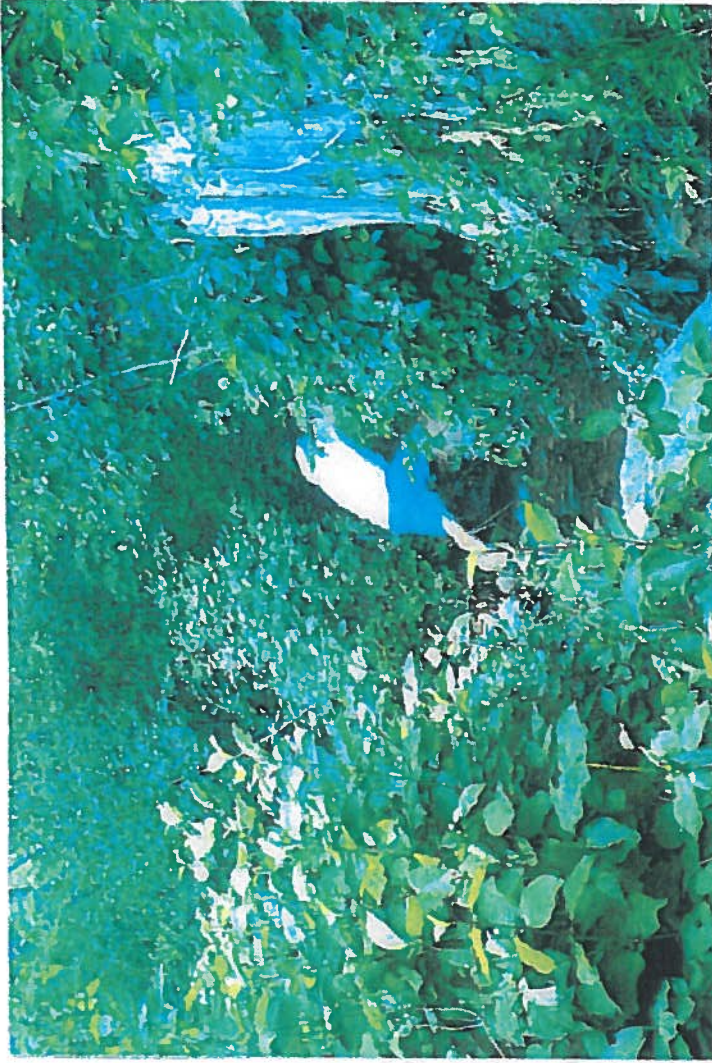


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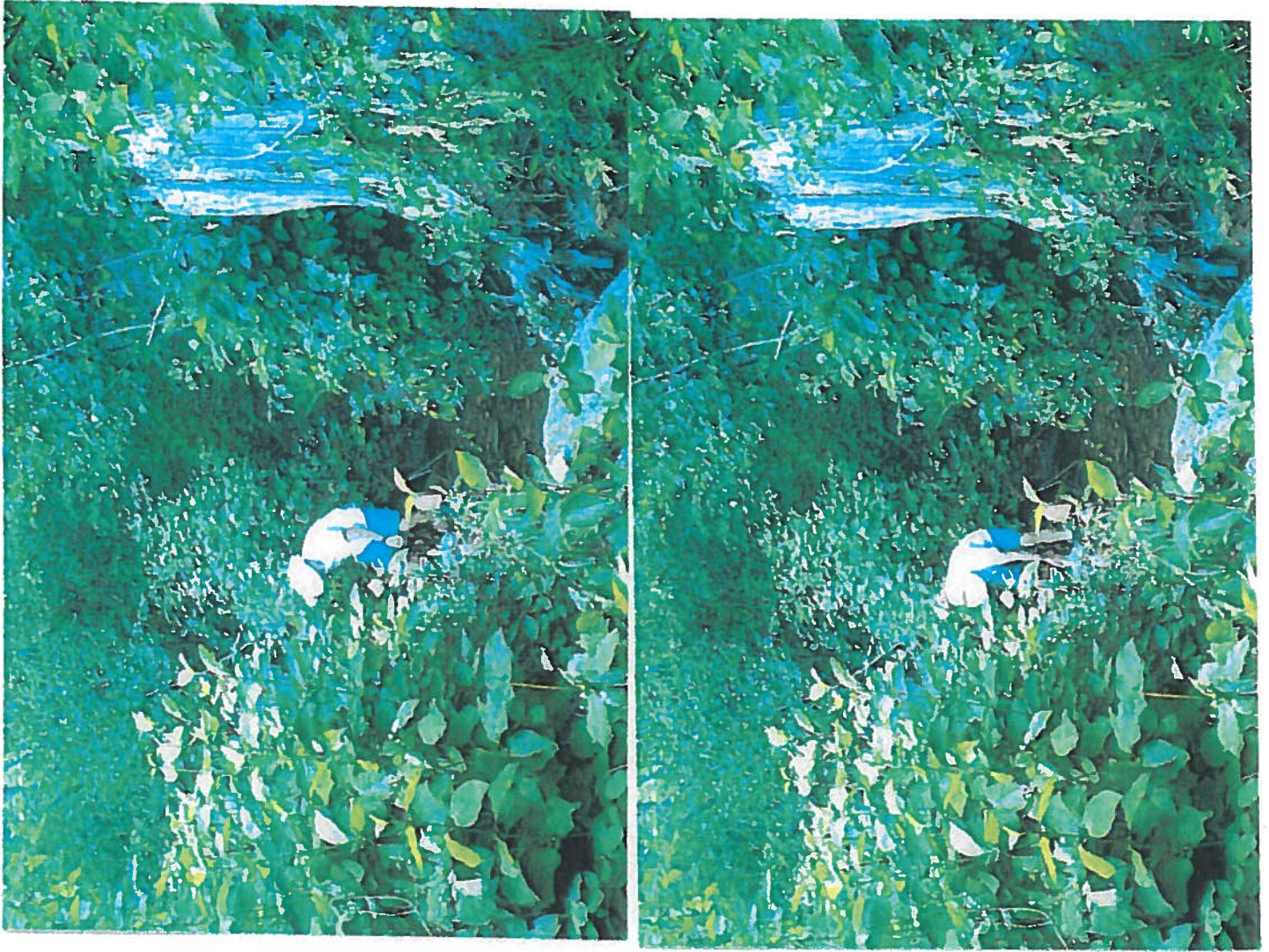
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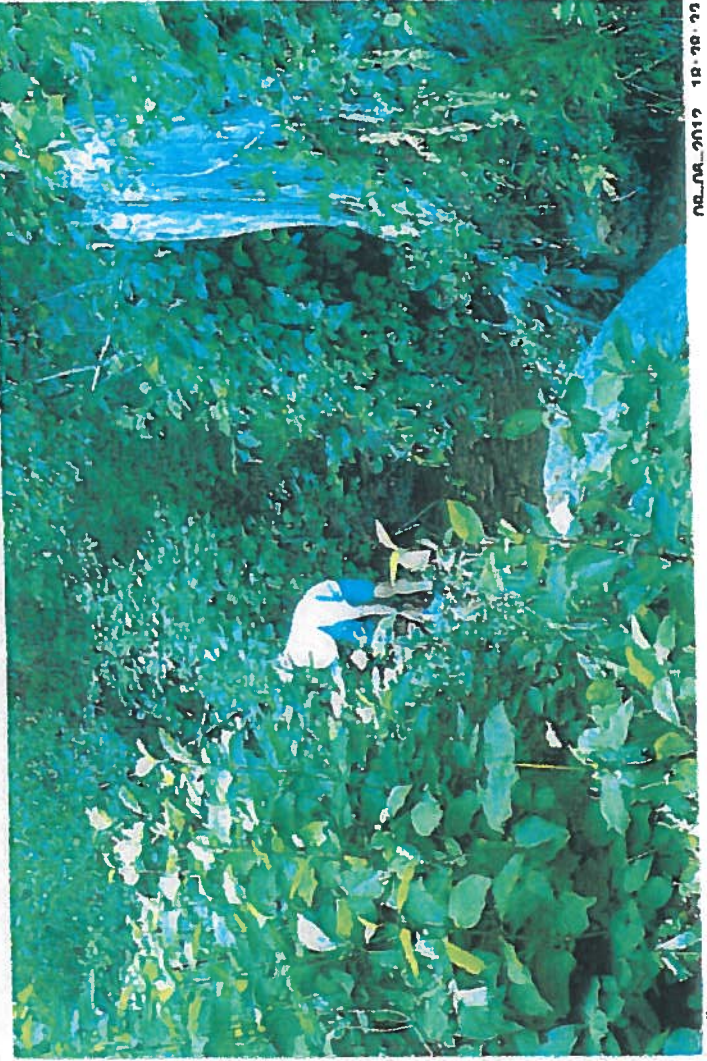
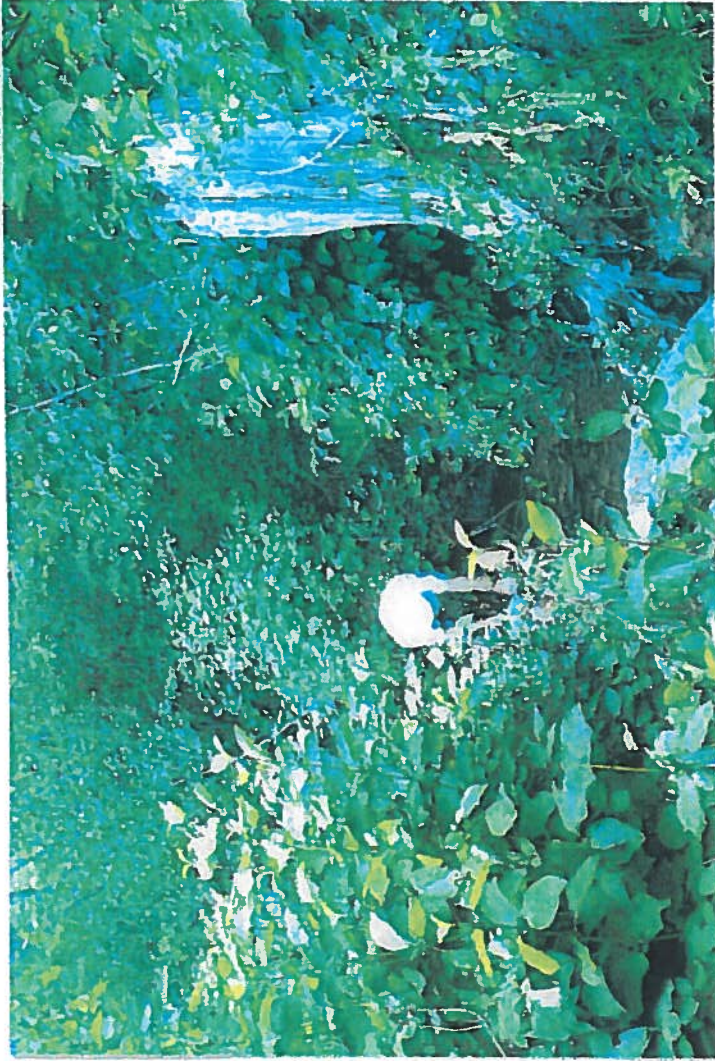


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ALLEN 001128



02-04-2012 12:28:22

02-04-2012 12:28:22

ALLEN 001129



ALLEN 001130