

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 65-23493 AND
APPLICATION FOR TRANSFER NO.
78252 IN THE NAME OF ALLEN RANCH
LLLP

**INTERLOCUTORY ORDER
AUTHORIZING CERTAIN TERMS
AND CONDITIONS**

FACTUAL AND PROCEDURAL HISTORY

On Tuesday, December 10, 2013, and Wednesday, December 11, 2013, the Department's hearing officer conducted a hearing in connection with the protests filed against application for permit no. 65-23493 and application for transfer no. 78252. The applicant, Allen Ranches LLLP, and the following protestants participated in the hearing:

- Sandra Chess
- Jim Bunce
- Cris McClintick
- Randy McClintick

Protestants West Mountain Properties LLC and West Mountain Water Association Inc. did not appear at the hearing. On December 23, 2013, the hearing officer issued default orders dismissing West Mountain Properties LLC and West Mountain Water Association Inc. from further participation in this matter.

Application for transfer no. 78252 seeks to add points of diversion to the irrigation use authorized by water right no. 65-3111X, but it does not seek to extend the authorized irrigation season.

Application for permit no. 65-23493 seeks, among other things, authorization for an extended irrigation season for the same irrigation use authorized by water right no. 65-3111X.

During the hearing the participating parties agreed to pursue settlement negotiations. The hearing officer adjourned the hearing for two hours to allow the negotiations to proceed. At the end of the adjournment, the participating protestants each informed the hearing officer on the record that they would withdraw their protests if the Department would impose the following conditions on any approvals issued in this matter:

Between 4/15 and 10/15, when the water right holder is diverting into Little Rock Creek from Rock Creek from the upper point of diversion located in the NW¼SW¼, Section 3, Township 13 North, Range 3 East, B.M., the watermaster shall ensure between 0.40 cfs and 0.54 cfs is left in Rock Creek to supply downstream water users in Rock Creek.

SCANNED

DEC 24 2013

For the extended irrigation season, the water right holder agrees there will be no use of temporary diversion works at the upper point of diversion, located in the NW¼SW¼, Section 3, Township 13 North, Range 3 East, B.M., after December 1.

Allen Ranches LLLP agreed on the record to accept the proposed conditions if the protests are withdrawn.

Pursuant to Rule 612 of the Department's Rules of Procedure (IDAPA 37.01.01.612), the Department has reviewed the conditions proposed by the parties.

CONCLUSIONS OF LAW

The proposed condition requiring 0.40 cfs to 0.54 cfs to be left in Rock Creek is not a minimum stream flow, which can be established only by the Idaho Water Resource Board pursuant to Idaho Code § 42-1503. Rather, the condition establishes a flow of water that must be passing the diversion point in order for the right holder to divert water from Rock Creek pursuant to its water right(s). Bypass flows have been employed successfully on other water right approvals issued by the Department.¹ The Department should impose the bypass requirement as requested by the parties.

The proposed condition prohibiting the use of temporary diversion works at the upper point of diversion would prevent the right holder from impeding the flow of Rock Creek down its natural course from December 1 of each year until the authorized irrigation season commences the next year. This proposed condition restates the legal fact that the right holder is not authorized to divert the flow of Rock Creek or impede its flow outside the periods of use stated on the right holder's water right(s). Because only application for permit no. 65-23493 proposes the extended irrigation season ending on November 30, and the transfer does not propose such an extended season for water right no. 65-3111X, this proposed condition is applicable only to the application for permit and not to the application for transfer. The Department should impose the proposed condition on any approval issued in connection with the application for permit, but it is not necessary for any approval issued in connection with the application for transfer.

ORDER

IT IS HEREBY ORDERED that any permit or water right license issued in connection with application for permit no. 65-23493 and any approval issued in connection with application for transfer no. 78252 shall include the following condition:

Between 4/15 and 10/15, when the water right holder is diverting into Little Rock Creek from Rock Creek from the upper point of diversion located in the NW¼SW¼, Section 3, Township 13 North, Range 3 East, B.M., the watermaster shall ensure between 0.40 cfs and 0.54 cfs is left in Rock Creek to supply downstream water users in Rock Creek.

¹ For examples, see permit no. 77-14283 and permit no. 74-15613.

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DEC 24 2013

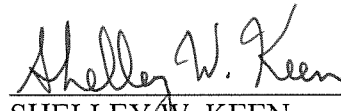
IT IS FURTHER HEREBY ORDERED that any permit or water right license issued in connection with application for permit no. 65-23493 shall include the following condition:

For the extended irrigation season, the water right holder agrees there will be no use of temporary diversion works at the upper point of diversion, located in the NW¼SW¼, Section 3, Township 13 North, Range 3 East, B.M., after December 1.

IT IS FURTHER HEREBY ORDERED that because the Department and Allen Ranches LLLP have agreed to the terms of settlement, the protests by Sandra Chess, Jim Bunce, Cris McClintick, and Randy McClintick are deemed **WITHDRAWN**.

IT IS FURTHER HEREBY ORDERED that this order is an interlocutory order issued pursuant to Rule 710 of the Department's Rules of Procedure (IDAPA 37.01.01.710). Any party aggrieved by this order may petition the hearing officer to review the order pursuant to Rule 711 of the Department's Rules of Procedure (IDAPA 37.01.01.711). Any such petition shall be submitted to the hearing officer by January 6, 2013.

Dated this 24th day of December, 2013.



SHELLEY W. KEEN
Hearing Officer

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CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2013, I mailed a true and correct copy, postage prepaid, of the foregoing INTERLOCUTORY ORDER AUTHORIZING CERTAIN TERMS AND CONDITIONS to the person(s) listed below:

RE: Transfer No. 78252 65-3111X
Application for Permit 65-23493

SANDRA CHESS
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BOISE ID 83709

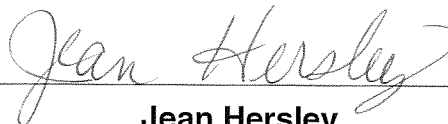
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Jean Hersley

Technical Records Specialist II

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