

West Mountain Water Association, Inc.
P.O. Box 388
Cascade, ID 83611

RECEIVED

DEC 06 2013

Department of Water Resources

December 6, 2013

State of Idaho
Department of Water Resources
Shelley Keen, Hearing Officer
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

RE: Representation at hearing for water right application filed by Allen Ranch LLLP
65-23493 & 78252

Dear Mr. Keen,

We are in receipt of your letter dated December 4, 2013, noting the Supreme Court Ruling from 2009, *Indian Springs LLC v. Indian Springs Land Inv. LLC*. 147 Idaho 737, 744-45, 215 P.3d 457, 464-65, that may be cause to disallow representation of West Mountain Water Assoc., Inc. a Non-Profit Organization, by an officer of the association.

As you are aware, on October 8th, 2013, Charles L. Honsinger, the attorney for West Mountain Water Assoc., Inc., submitted a Motion for Stay of Administrative proceedings, sighting that Allen Ranch LLP's concurrent Motion for Relief From Judgment before the SRBA, among other things, would be wasteful of party resources, (knowing the association will have no choice but to join in the SRBA proceedings as an objector). This motion was denied. As a result, based on the limited assets of our non-profit association, the only option for the Association to continue with the protest of Allen Ranch LLP's applications and protect our water right, was the representation by an officer.

West Mountain Water Association, Inc., has complied with the Rules of Procedure for Idaho Department of Water Resources (IDWR). Similar to the North Ada County Groundwater Users protest of application 63-32573, in which representation by an officer was allowed. However, based on your letter regarding the 2009 Supreme Court Ruling, we may forced to resign our protest in this matter. It is not likely that two business days will be sufficient for an attorney to prepare for the hearing. It is the association's plea that the Director of the State of Idaho Department of Water Resources, will protect our water right from injury when considering the application for Permit 65-23493 and application for transfer 78252, in the name of Allen Ranch LLP, in the event we are unable to participate.

It is appropriate at this time to bring to your attention instances of non-compliance, by both the applicant and IDWR, with certain Rules of Procedure in these matters, to ensure these violations will not subject the decision in this case to appeal as well. The following list may not be all inclusive, but appear to be material in the processing and approval of these applications:

Application 65-23493 was filed with IDWR on May 9, 2012, it was incomplete. IDWR failed to return the application for completion or amendment by the applicant.

IDAPA 37.03.08 RULE 035. 01, d. All applications for permit to appropriate public water or trust water of the state of Idaho shall be on the form provided by the department entitled "Application for Permit to Appropriate the Public Waters of the State of Idaho" and shall include all necessary information as described in Subsection 035.03. An application for permit that is not complete as described in Subsection 035.03 will not be accepted for filing and will be returned along with any fees submitted to the person submitting the application. No priority will be established by an incomplete application. Applications meeting the requirements of Subsection 035.03. will be accepted for filing and will be endorsed by the department as to the time and date received. The acceptability of applications requiring clarification or corrections shall be determined by the Director.

Application 65-23493 was published on August 8, 2013, prior to completion or amendment. The information in the public notice included three points of diversion, while the application referenced only two. On September 30, 2013, after the protest deadline of August 19, 2013, the application was amended to include a total of four points of diversion.

IDAPA 37.03.08 Rule 035, .03. b, iii. The legal description of the point of diversion and place of use shall be listed. The location of the point(s) of diversion and the place of use shall be described to the nearest forty (40) acre subdivision or U.S. Government Lot of the Public Land Survey System. The location of springs shall be described to the nearest ten (10) acre tract. Subdivision names, lot and block numbers and any name in local common usage for the point of diversion, or place of use shall be included in the comments section of the application form. If irrigation is listed as a purpose of use, the number of acres in each forty (40) acre subdivision of the place of use shall be listed.

IDAPA 37.03.08 Rule 035, .04. a. Applications for permit shall be amended whenever significant changes to the place, period or nature of the intended use, method or location of diversion or proposed use or uses of the water or other substantial changes from that shown on the pending application are intended. An application shall be amended if the proposed change will result in a greater rate of diversion or depletion (see Subsection 035.04.c.), if the point of diversion, place of use, or point of discharge of the return flow are to be altered, if the period of the year that water will be used is to be changed, or if the nature of the use is to be changed.

IDAPA 37.03.08 RULE 035. 01, e. The department will correspond with the applicant concerning applications which have been accepted for filing by the department which require clarification or correction of the information required by Subsection 035.03. If the additional or corrected information is supplied after thirty (30) days, the priority date of the application will be determined by the date the additional or corrected information is received by the department unless the applicant has requested within the thirty (30) day period additional time to provide the information, has shown good reasons for needing additional time, and the Director has granted additional time.

Application 65-23493 was signed by Bruce Smith on behalf of Allen Ranch LLP, on or before May 9, 2012. The Power of Attorney submitted to IDWR is dated 08/01/2013. It is not possible that the POA was submitted to IDWR with the application.

IDAPA 37.03.08 Rule 035, .03. b, xiv. Applications may be signed by a person having a current "power of attorney" authorized by the applicant. A copy of the "power of attorney" shall be included with the application.

Application 65-23493 was filed with IDWR on May 9, 2012. The processing of this application was delayed for over 12 months. While others continued to claimed injury.

IDAPA 37.03.08 Rule 040, d. An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The Director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The Director may approve a request for delay for a shorter period of time or upon conditions, and may renew the approval upon written request.

Application for Transfer 78252 was signed by Bruce Smith on behalf of Allen Ranch LLP, on May 24, 2012. The Power of Attorney submitted to IDWR is dated 08/01/2013. It is not possible that the POA was submitted to IDWR with the application.

ADMINISTRATOR'S MEMORANDUM; RE: TRANSFER PROCESSING POLICIES & PROCEDURES Rev 8.3, Authored by Jeff Peppersack, dated December 21, 2009, page 12 (10)

(10) Signature. The application for transfer must include the signature of the applicant or the applicant's authorized representative. If a representative signs the application, evidence of authority to sign for the applicant must accompany the application. An application in more than one name must be signed by each applicant unless the right is held in the name of one joint owner "or" other joint owner(s), or the right is held in the name of one joint owner "and/or" other joint owner(s).

Application for Transfer 78252 reflects the name of the applicant as Allen Ranch LLLP, for water right to be transferred 65-3111X. IDWR records reflect the current holder of water right 65-3111X as EK Allen Ranch LTD Partnership.

ADMINISTRATOR'S MEMORANDUM; RE: TRANSFER PROCESSING POLICIES & PROCEDURES Rev 8.3, Authored by Jeff Peppersack, dated December 21, 2009, page 8 (2)

(2) Name and Address. An application for transfer must include the name and address of the applicant. In addition, the application must include the name and address of any new right holder(s) for the water rights (or parts thereof) being transferred, if different than the applicant. The applicant's name must match the department's current record of ownership for the water rights (or parts thereof) being transferred. Otherwise, adequate documentation must be included to show that a change in ownership or authority to make the change has legally occurred. Adequate documentation can be a warranty or other deed, title policy, contract of sale or option for purchase by applicant (if the contract or option allows the transfer), or other similar document confirming ownership of the water right(s) or the authority to change the water right. See Records Memorandum No.9 for additional guidance on water right ownership documentation.

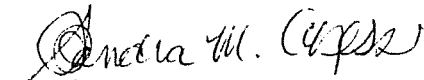
Transfer application 78252 filed with IDWR on May 31, 2012, it was incomplete. IDWR failed to return the application for completion or amendment by the applicant. Application 78252 was published on August 8, 2013, prior to completion or amendment. On September 30, 2013, after the protest deadline of August 19, 2013, the application was amended to change the purpose of transfer from "change point of diversion" to "add point of diversion(s)".

ADMINISTRATOR'S MEMORANDUM; RE: TRANSFER PROCESSING POLICIES & PROCEDURES Rev 8.3, Authored by Jeff Peppersack, dated December 21, 2009, page 15-16, 4.

4. Changes to Applications for Transfer.

Amendment of Application. An applicant may revise or amend an acceptable application for transfer to clarify or correct information on the application. Significant changes to the place, period, or nature of the proposed use, amount of water, method or location of diversion, or other substantial changes from those shown on a pending application for transfer, will require filing a new application for transfer to replace the original application. If the revisions are not substantial, the application may be revised or amended with an initialed, dated endorsement by the applicant, or by the applicant's representative, on the original application, or by a letter describing the amendments in sufficient detail. Changes initialed or signed by the applicant's representative must be accompanied by evidence providing authority to sign for the applicant if not previously provided. Changes to the application or supporting information are not to be made by staff under any circumstances. A replacement application must be identified as "changed," "amended" or "revised" on its face so that it can be distinguished from the original application, and the original application must be marked as "superseded." An additional filing fee may be required if the revised or replacement application involves more water than proposed in the original application for transfer. Are-advertisement fee, as provided in Section 42-221 F, Idaho Code, will be required if notice of the original application has been published and changes to the original application are significant and warrant re-notice. (See Transfer Processing Memorandum No. 20 for additional information regarding changes to applications.)

Respectfully submitted this 6th day of December, 2013,



Sandra M Chess, Director
West Mountain Water Assoc., Inc.

Keen, Shelley

From: schess Chess [schess123@msn.com]
Sent: Friday, December 06, 2013 12:34 PM
To: Keen, Shelley
Cc: Issy Bunce; Tressa; Kotters; jerry Dye; schess Chess
Subject: West Mtn Water Assoc., response to representation
Attachments: Document.pdf

Good Afternoon,

The attached is the response to your letter regarding representation and the 2009 Supreme Court ruling. We do not want to do anything that would cause the decision in these proceedings to be subject to appeal and we understand the dilemma this newly discovered ruling presents. This is not a withdrawal of our protest, if that is required it will be forth coming in the appropriate format.

I have copied the association's Board of Director's on this email for informational purposes only.

I also received your voice message and I will be calling at my next break and after your lunch time.

Thank you,

Sandra Chess