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DEPARTMENT OF
WATER RESOURCES

*faxed received
December 05, 2013*

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	PREPARED TESTIMONY OF
PERMIT NO. 65-23493 IN THE NAME OF	)	J.R. ALLEN IN SUPPORT OF
ALLEN RANCH LLP AND APPLICATION FOR	)	APPLICATION FOR PERMIT
TRANSFER NO. 78252 IN THE NAME OF	)	NO. 65-23493 AND
ALLEN RANCH LLP	)	APPLICATION FOR
_____	)	TRANSFER NO. 78252

Question No. 1: Please state your name for the record.

Response to Question No. 1: J.R. Allen.

Question No. 2: Are you familiar with Allen Ranch LLP?

Response to Question No. 2: Yes. This the entity which owns the ranch in Valley County and that has applied for the water rights permit and the transfer in this matter. I am the general partner of the partnership.

Question No. 3: How did you come to own the ranch?

Response to Question No. 3: My grandfather homesteaded it and it has been passed along through the family, from my father to me.

ORIGINAL

Question No. 4: Do you recognize Allen Exhibits 1 and 2?

Response to Question No. 4: Yes.

Question No. 5: What are they?

Response to Question No. 5: Exhibit A1 is the Application for Transfer No. 78252. Exhibit A2 is the Application for Permit No. 65-23493.

Question No. 6: What is the purpose of the transfer and why did you file it?

Response to Question No. 6: The transfer is intended to correct the points of diversion on my existing, decreed water right number 65-3111x. The point of diversion as decreed does not include what is known as the Upper Diversion which is located in the NSW of section 4, T13N, R3E.

Also, I have another point of diversion known as the Lower Diversion which diverts water from Rock Creek. If the transfer is approved the water right will reflect the three points of diversion that are used to irrigate my ranch and water livestock. The Upper Diversion was left off the water right in the Payette Adjudication and the omission was carried through to the Snake River Basin Adjudication. So, water right 65-3111x as decreed does not reflect the historical points of diversion. The Lower Diversion is used to irrigate a portion of the ranch. It is below all other water right/points of diversion on Rock Creek.

Question No. 7: Do you know why the Upper Diversion was omitted from the water right?

Response to Question No. 7: No. The Upper Diversion has been in existence since my grandfather built it in the late 1800's when he homesteaded the ranch. It was built to allow water from Rock Creek to go down Little Rock Creek so the northern part of the ranch could be irrigated. It is also used to water cattle on that part of the ranch. But it was built by my grandfather and has been used continuously since then.

Question No. 8: What have you done to try to find out about the omission of the Upper Diversion from the water right?

Response to Question No. 8: My attorney and I have looked through the records of the IDWR. I've talked to IDWR. The records of IDWR including the 1932 Decree in Allen v. Withers show the Upper Diversion and the ditch which was constructed by my grandfather to move Rock Creek

water into Little Rock Creek. I also asked Dr. Dave Tuthill to explain what may have happened. Dr. Tuthill looked at the records of IDWR and prepared an affidavit that explained the IDWR review process for the Payette Adjudication. He also said the omission of the Upper Diversion was a mistake that should be corrected. That is what I am trying to do through this transfer.

Question No. 9: Is the Upper Diversion critical for your ranch?

Response to Question No. 9: Absolutely. There is a rise between the southern part of the ranch and the northern part so diverting water from Rock Creek to Little Rock Creek is the way we cover the entire area. So we have to be able to use the Upper Diversion. And we always have. The northern part of the ranch has the most irrigated acres and they have always been irrigated in part by the Rock Creek water being put into Little Rock Creek, then down to the ranch.

Question No. 10: Isn't correcting the point of diversion the same thing the West Mountain Water Association did in their transfer?

Response to Question No. 10: Yes. The exact same thing. Their letter to IDWR dated January 19, 2011, says they were trying through their transfer to correct the IDWR records, by having their historical point of diversion recognized. That is what I'm doing too. The Allen Ranch has diverted at the Upper Diversion since it was constructed and as it is recognized in the 1932 Allen v. Withers decree. The June 19, 2011 West Mountain letter is Exhibit A10.

Question No. 11: Do you know how their point of diversion came to be incorrectly described?

Response to Question No. 11: No. I have to believe it's another unexplained error. But we both need to have our points of diversion reflect the historical location.

Question No. 12: Have you always irrigated your ranch?

Response to Question No. 12: Yes. We- my grandfather, father, me and my son- have always irrigated the ranch because that's what creates the forage. We also have watered our livestock from Rock Creek and Little Rock Creek. We irrigated and watered livestock until 2013, when the Director ordered us to stop. We have always irrigated to the extent the water is available.

Question No. 13: Regarding that directive from the Director, do you know why it happened?

Response to Question No. 13: Yes. The Director had told everyone to maintain the status quo with use of water from Rock Creek until the point of diversion problem was corrected. These directions were in the Director's letter dated June 17, 2011. Then, apparently, there was some confrontation by people at the Upper Diversion and the Director then decided to stop my diversion.

Question No. 14: Did you have anything to do with that confrontation?

Response to Question No. 14: Absolutely not. I wasn't there. My understanding is that it was between some of the West Mountain Water people and another person. But I'm the one who had his water cut off and was damaged.

Question No. 15: With regard to the status quo use of water according to the Director's order, did you comply with that?

Response to Question No. 15: Yes. 100 percent. The Director wanted to make sure the Homeowner Association had enough water to fill their right, so I operated the Upper Diversion to make sure that happened. However, others did not follow the Director's instructions and were sneaking up to change the diversion so that I would get almost no water from Little Rock Creek.

Question No. 16: If your transfer is approved, what will the results be?

Response to Question No. 16: I will be able to use my historical diversion and to operate my ranch the way it always has been operated. If it is not approved, I won't be able to irrigate the north part of the ranch or to use the irrigation system that has been in place since my grandfather's days. If approved, it will also correct the IDWR records, just as the West Mountain transfer did.

Question No. 17: If the transfer is approved will the transfer reduce the quantity of water for existing rights?

Response to Question No. 17: No. There will be no change from the way my diversions have always operated. I, along with the West Mountain Homeowners, have the senior rights for Rock Creek. The West Mountain Water folk have a right to .05 cfs of water and they are entitled to that just like I am entitled to my 2.7 cfs. If the flows in Rock Creek drop off, we both suffer a pro rata reduction in the amount of water we get. All other rights from Rock Creek are entitled

to their water according to their priority dates. The transfer simply corrects the point of diversion that was left off of the water right in the Payette SRBA adjudication.

Question No. 18: Can Mr. Shurtleff, the water master, administer the rights of Rock Creek so that everyone gets their water right according to their priority dates?

Response to Question No. 18: Not only can he, but he is required to do that. I have no problem with administering the water rights for Rock Creek according to priority dates. It's the law. But just like the West Mountain Water folks, I am entitled to my historical diversion points. There will be no injury to other water rights from the transfer.

Question No. 19: If your transfer is approved, will you enlarge your use?

Response to Question No. 19: No. No additional acres will be irrigated and the cattle will be watered just like always and just like under the existing right.

Question No. 20: Is your transfer going to be contrary to conservation of water resources in the state?

Response to Question No. 20: No. I am using the water for a beneficial use. I am not wasting it, and I am using what I need to operate according to my water rights. I am not changing anything or any use from the Upper Diversion that has not been happening for the past fifty or more years. With regard to the Upper Diversion, I am simply correcting the records of IDWR through the transfer. The use is the same.

Question No. 21: Do you think there is any conflict with the local public interest?

Response to Question No. 21: No. Not a real conflict. If there was a conflict with the local public interest there would have also been a conflict when the West Mountain Water transfer was being evaluated. None was identified then. I understand that some of the members of the West Mountain Water Association do not want me to be able to irrigate or to run livestock, but that is the business I am in. Some others want to keep water in Rock Creek so they can see it and listen to it. I understand that, but they need to respect my right to operate and to use my water.

Question No. 22: Do you understand some of them think your transfer is taking their water right?

Response to Question No. 22: Yes. But that's not true. They should be able to get their water right according to the amount and priority date they have. But I think they want more water than their right allows them to get and they want part of my water right to be used for them.

Question No. 23: What do you mean?

Response to Question No. 23: They have a right to .05 cfs of water. But they have a system that is not adequate for what they are trying to do. They have two 1000 gallon tanks and .05 cfs of water and they are trying to service over 60 homes with that. It won't work all the time because some of those homes are going to have more use than others. Their entire water system is more like that of a water system for a single house with a domestic water right of .04 cfs. A typical domestic right is for up to 13,000 gallons a day, which is over six times the amount they have available in their two tanks to service all 60 + houses.

Question No. 24: Do you have any other comments on the local public interests?

Response to Question No. 24: Yes. I am also part of the local public and I have a concern about the Protestants trying to stop me from using my water right the way I have always used it. I cannot account for the error in the point of diversion description. It's just like the problem the West Mountain Water Association had. They did a transfer to fix their problem, but now some of the members want to stop me from fixing mine and correcting the IDWR records.

Question No. 25: What about the "sound of a bubbling brook" issue?

Response to Question No. 25: First, most of the time they will have water flowing down Rock Creek because I irrigate and use water below their houses. So my use of water actually helps them with that issue. But sometimes I need water on the north end of the ranch so I have to adjust the irrigation according to need. That is true conservation. That is also consistent with my historical use. That is the situation that all of the homeowners bought into when they bought their homes.

Question No. 26: Is your transfer going to adversely affect the local economy?

Response to Question No. 26: No. In fact, it will help the local economy because the water is used to produce forage, to maintain the ranch, and to produce livestock. It supports the local economy year round too because it provides jobs. Also, the way I irrigate and water the livestock helps keep the cattle from going to Cascade Lake as much for water. There are efforts to improve water quality in Cascade so this is consistent with those efforts. Plus, the Cascade area is a rural environment and people like to visit and recreate there. Not all of it needs to be subdivided and keeping my ranch viable helps maintain the rural environment that people like.

Question No. 27: When you have testified about the Upper Diversion, what specific diversion are you referring to?

Response to Question No. 27: If you look at the map which was included in the IDWR records related to the Allen v. Withers Decree, it is the diversion shown as a ditch that diverts water from Rock Creek into Little Rock Creek in the SW quarter of Section 3. The map is included in my Exhibits A3, A6 and A7. Not only can I verify the existence of the diversion, but my Exhibit A6 also contains affidavits from Bill Leslie and John Kwader, both of whom are familiar with the diversion, and confirm its location and existence based on their long history in the area and personal observation.

Question No. 28: Have you discussed the need to make any changes at the Upper Diversion with Mr. Shurtleff, the water master?

Response to Question No. 28: Yes. I asked Mr. Shurtleff if he could administer the water rights in Rock Creek without any changes to the Upper Diversion. He said he could. So I do not anticipate any need to make changes to the Upper Diversion. In addition to no changes in the use of water through the transfer, the diversion system won't change either. As I said, we are correcting the IDWR records as to the historical diversion point, not the historical use of water. There is no enlargement of use. All other water rights can be filled in order of priority and quantity. If there are cuts made based on reduced flows, everyone's water rights are affected according to amount and priority.

Question No. 29: What is the reason and purpose for your application for permit No. 65-23493?

Response to Question No. 29: The application serves two purposes. First, historically, I have irrigated outside the range of dates included on my water rights. The decreed period is April 15, to October 15. In any given year, and most years, I have irrigated before and after those dates. Depending on snow pack, temperature, and other factors, we start irrigating as early as March 15 and as late as November 30. The snow in Valley County seems to be coming later and leaving

earlier than historically, so I want to continue to take advantage of the opportunity to keep the moisture in my ground as long as possible. Starting to irrigate sooner than April 15 is almost always possible. Irrigating later is somewhat less reliable but possible. Because of the nature of my ground, taking advantage of a longer irrigation season allows for better forage production. Increased forage allows more cows to graze longer. So the increased irrigation season benefits my ranch and forage and food production. The same amount of water is requested as is allowed under No. 65-3111X. The use is on my own private property.

The second purpose of the application is to have stockwater use identified specifically. Although instream stockwater use is recognized under the irrigation right, I believe I am better off having stockwater identified as a specific use to be able to protect my right to have livestock. I found records in the Payette Adjudication that indicate stockwater use was not specifically identified, which has led some to question livestock watering. I have made two applications for stockwater. One is from May 15 to November 30. The second is year round. When the ranch was first established as a homestead, cattle were maintained year round. I may try to go back to that type of use and would need a year round water right to ensure I could divert water for livestock. The May 15 to November 30 application is not needed if the year round application is approved.

Question No. 30: Is your application going to reduce the quantity of water under existing water rights?

Response to Question No. 30: No. The priority date on this application is subject to the priority system so if there is not sufficient water for this right and all other senior rights, this right would be cut off according to the priority date.

Question No. 31: Is there sufficient water for the purpose of the appropriation?

Response to Question No. 31: At times. At other times, there may not be. In the early spring and summer, as runoff is occurring, there is generally a good deal of water in Rock Creek. Usually it is at least 4.5 cfs. In late summer/early fall, flows in Rock Creek drop, so it is not likely that 2.7 cfs of water for irrigation would always be available. However, some water would be available. Development of this permit will help establish available amounts consistent with other prior appropriations. In late fall and early spring there is likewise some water available for livestock use. In the spring, sufficient water is always available. In late summer/early fall, some if not all, the water necessary for the stockwater use would exist; whether it is available depends on who else would be using water and the order of priority. However, I believe even in late summer/early fall some water would be available for stockwater.

Question No. 32: Are you making this application in good faith or for delay or speculative purposes?

Response to Question No. 32: Absolutely not. As for the irrigation, I have historically irrigated earlier and later than the season in my water right. I understand that season was established as a general season and not specific as to any uses that may differ. We have tried to make good use of water early and later to enhance forage production. My particular ground responds well to this early and late irrigation. Since I am seeking a water right consistent with past practices, this application is not speculative. As I intend to actually use the water that I filed for, it is filed in good faith.

Question No. 33: Do you have the financial resources to complete this project?

Response to Question No. 33: Yes. The diversion structures and ditches are already in place so no additional funds are required.

Question No. 34: Does this application conflict with the local public interest?

Response to Question No. 34: No. Not in my opinion. I am part of the local public. I am proposing to put the water to a beneficial use. While some folks such as the Protestants do not believe I should be allowed a water right, appropriating unappropriated water is my right, just as it was their right to obtain a water right. As with my comments on the transfer, the use of water at the bottom of Rock Creek provides benefit to the Protestants because it is below all other diversions, so they get the benefit of the water flowing past them. If I am able to get any water from this permit, by definition, they will not be injured because they will have gotten their water first. If not, this water right can be shut off. Also, the use of the water as proposed helps keep cattle from drinking from Cascade Reservoir. This will help ensure better water quality in the reservoir.

Question No. 35: Is the proposed use contrary to the conservation of water resources?

Response to Question No. 35: No. Just the opposite. The water will be put to recognized beneficial uses for irrigation and stockwatering. It will not be wasted. The use is being made on my own land. Any water that is not used continues down the stream.

Question No. 36: Is the use going to adversely affect the local economy of the watershed or local area?

Response to Question No. 36: No. Just the opposite. It will benefit the local economy. The use of the water will provide additional forage and livestock. It will help with local jobs. To the extent my use helps keep the cattle from going to the Cascade Reservoir, it helps with water quality improvement. This helps the local recreation and tourism community. Plus, not everyone wants to see all of the area developed into subdivisions. If I can maintain a viable ranch, it keeps the open space that people like to come to Cascade for and to recreate.

Question No. 37: Have you submitted some Exhibits in this matter?

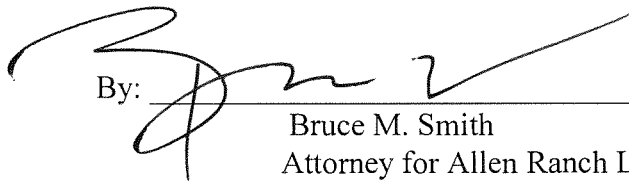
Response to Question No. 37: Yes. The Exhibits are included in the list I previously filed. Each of these exhibits support my testimony. Three of the exhibits- A5, A6, and A7 are affidavits I have filed in other proceedings and that are helpful in explaining these applications and my testimony. Exhibit A8 is the record of Allen Ranch, LLP's filing with the Secretary of State. Exhibits A9 and A13 are photos that show various aspects of the Upper Diversion.

Question No. 38: Do you have any further testimony?

Response to Question No. 38: Not at this time.

Respectfully submitted this 5 day of December, 2013.

MOORE SMITH BUXTON & TURCKE, CHTD.

By: 
Bruce M. Smith
Attorney for Allen Ranch LLP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5 day of December, 2013, I caused to be served a true and correct copy of the foregoing **PREPARED TESTIMONY OF J.R. ALLEN IN SUPPORT OF APPLICATION FOR PERMIT NO. 65-23493 AND APPLICATION FOR TRANSFER NO. 78252** via prepaid, U.S. Mail, to the following:

Original to: (Via Facsimile and hard copy Via U.S. Mail)

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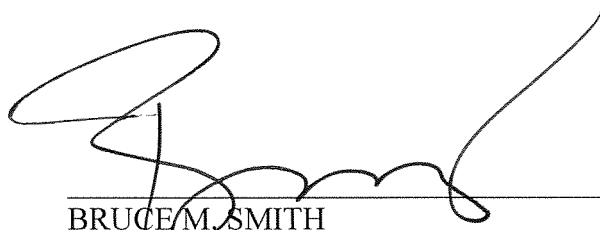
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