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Attorney for Allen Ranch LLP

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
PERMIT NO. 65-23493 IN THE NAME OF	)	
ALLEN RANCH LLP AND APPLICATION FOR	)	APPLICANT'S RESPONSE TO
TRANSFER NO. 78252 IN THE NAME OF	)	PROTESTANT SANDRA CHESS'
ALLEN RANCH LLP	)	MOTION TO CONTINUE
	)	

COMES NOW Allen Ranch LLP and responds to Protestant Sandra Chess' Motion to Continue. Ms. Chess asks that the hearing in these matters be continued and discovery extended at least thirty (30) days after certain SRBA proceedings have been "finalized". She, in essence, is asking for the proceeding to be delayed until at least some time in 2014. Ms. Chess does not explain what she means by "finalized" so it is not clear exactly when she would agree to proceed. The basis for her motion is that there will be duplication of litigation for "all parties" and a continuance would avoid work by the Department of Water Resources.

Ms. Chess' arguments reflect a fundamental misunderstanding of the above applications and the SRBA proceeding, the parties involved, and the standards and

procedures to be applied. Further, she takes liberty with the facts and circumstances of her protests of the applications.

Ms. Chess is not a party in the SRBA proceeding. As a non-party in the SRBA proceedings, Ms. Chess will incur no attorney fees or costs. In contrast, in the administrative hearing, she will be given full opportunity to present her evidence. This will include evidence explaining how her groundwater right is injured by a surface water diversion. In short, Ms. Chess is not in a position to argue that she will incur any costs whatsoever in the SRBA proceeding or that she will be involved in duplicative litigation because neither is true.

Ms. Chess is not the only protestant involved in the hearing for the above two applications. She ignores the fact that other protestants as well as the Applicant have their own interests to protect in the applications proceeding. Her motion for continuance is nothing more than an ill-disguised attempt to delay the applications proceeding for her own narrow interests.

Equally as significant, Ms. Chess ignores that the administrative process involves more issues than just her fixation on issues surrounding the Applicant's upper point of diversion. The hearing scheduled in this matter was set by the Department after coordination among all the parties. It deals with transfers and new water rights. Ms. Chess is not entitled to derail the hearing process based on her own limited interest. Although she argues that the SRBA Court's decision will affect her protests, she fails to observe that the administrative proceeding comes before the SRBA hearing in January, 2014. It is far more likely the administrative proceeding could affect the SRBA hearing than the reverse. Because the applications encompass far more issues than simply a

single point of diversion, Ms. Chess would deny the Applicant the rights afforded it under the constitution and statute of the state. She fails to recognize that she is afforded an opportunity to present her evidence as part of the administrative proceedings. She is entitled to exercise her rights. She is not entitled to deny others the exercise of their rights.

CONCLUSION

Ms. Chess has presented no cogent argument to support her request for a continuance of the hearing date or discovery. The motion should be denied.

Respectfully submitted this 28 day of October, 2013.

MOORE SMITH BUXTON & TURCKE, CHTD.

By: _____

Bruce M. Smith
Attorney for Allen Ranch LLP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28 day of October, 2013, I caused to be served a true and correct copy of the foregoing **APPLICANT'S RESPONSE TO PROTESTANT SANDRA CHESS' MOTION TO CONTINUE** via prepaid, U.S. Mail, to the following:

Original to: (Via Facsimile)

Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, ID 83720-0098

Copies to: (Via First Class U.S. Mail)

John Westra
Regional Manager, Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

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c/o Charles Honsinger
Honsinger Law, PLLC
PO Box 517
Boise, ID 83701

Randy and Cris McClintock
PO Box 7
Orvada, NV 89425

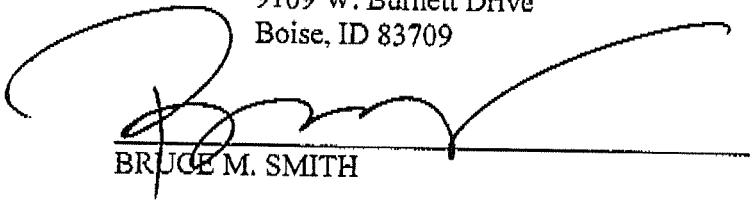
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Attorney for Allen Ranch LLP

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	APPLICANT'S RESPONSE TO
PERMIT NO. 65-23493 IN THE NAME OF	)	PROTESTANT WEST MOUNTAIN
ALLEN RANCH LLP AND APPLICATION FOR	)	WATER ASSOCIATION, INC.'S
TRANSFER NO. 78252 IN THE NAME OF	)	MOTION FOR STAY OF
ALLEN RANCH LLP	)	ADMINISTRATIVE PROCEEDINGS
_____	)	

COMES NOW Allen Ranch LLP and responds to Protestant West Mountain Water Association, Inc.'s (West Mountain) Motion for Stay of Administrative Proceeding. West Mountain's motion should be denied because it is without basis and relies on a fundamental misunderstanding of the applications and the SRBA proceeding.

ARGUMENT

West Mountain argues there are "concurrent" proceedings before the Department of Water Resources and the Snake River Basin Adjudication (SRBA) Court. West Mountain suggests the two bodies, each with its own procedures, authorities, and jurisdiction might render inconsistent conclusions. Yet, West Mountain ignores the fact that the two entities could reach the same result through application of different analyses and standards. West Mountain asserts Allen Ranch is forum shopping in order to find a

decision with which it agrees since the issues before the two entities are the same. Nothing could be further from the truth. Not only are the issues different, but the standards and procedures to be applied are vastly different.

The SRBA proceeding is intended to allow the Court to correct an error made in earlier judicial proceedings. The standards to be applied by the SRBA Court, should it find it appropriate to correct an incorrect decree, are entirely different than the standards to be applied by the Department in an administrative proceeding examining transfers and a new water right. The IDWR and the SRBA Court are each entitled to apply its own reasoning, analysis, and standards to issues presented to it according to its own jurisdiction and authority.

West Mountain argues the IDWR administrative proceedings may or may not be necessary depending upon the outcome of the SRBA proceeding. This is incorrect because the IDWR administrative proceedings will be required regardless of the outcome in the SRBA. This is because the applications encompass a broader range of issues and rights than the sole issue before the SRBA Court. The applications involve changes in points of diversion and new water rights. The SRBA processing involves correcting an error in a decree. Apparently, West Mountain would deny the Applicant the opportunity to exercise its statutory right to apply for a transfer or new water right just because the SRBA Court is being asked to review one aspect of an incorrect decree.

West Mountain argues that the SRBA proceeding and the administrative proceeding are wasteful of administrative, judicial, and party resources. In fact, it is West Mountain's motion that would lead to a waste of resources. West Mountain seeks to have the transfer proceeding (Transfer #78252) stayed while allowing the application for a

permit for a new water right (Application No. 65-23493) to proceed, thus leading to two separate administrative proceedings. Such a process is the definition of wasteful.

West Mountain also fails to grasp that the administrative proceeding precedes the SRBA proceeding. Thus, it is far more likely the administrative proceeding could affect the SRBA proceeding than the reverse. Regardless, it remains pure speculation by West Mountain as to the outcome in either proceeding. In a similar vein, West Mountain also speculates that the decision by the SRBA Court could come before or after any decision by the Department of Water Resources. Speculation about when an entity might render a decision is not a basis for denying an Applicant a timely hearing on a constitutionally protected right.

West Mountain is not the only party in the administrative proceeding. West Mountain is but one of a group of protestants, each of whom is entitled to participate in the administrative hearing. None of the protestants, including West Mountain or the IDWR, is a party in the SRBA proceeding. The protestants in the administrative proceeding will not incur a dollar of expense or other cost associated with the SRBA proceeding. That proceeding is simply to allow the Court to correct an incorrect aspect of the Court's earlier decree. In contrast, the administrative proceeding allows the IDWR to rule upon matters over which it has jurisdiction -- matters that go beyond the one issue raised by West Mountain.

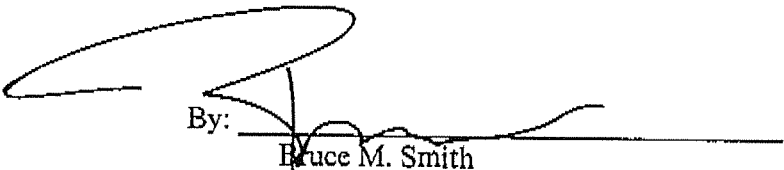
CONCLUSION

West Mountain is seeking to deny the Applicant and the other protestants their rights as defined by statute and the Constitution. It is also seeking to deny the IDWR's the ability to exercise its authority over proceedings set forth in Idaho Code. The motion

is ill-founded and without any substantive basis. It is merely a procedural effort to delay the hearing to the detriment of the Applicant and the other parties. The Motion should be denied.

Respectfully submitted this 28 day of October, 2013.

MOORE SMITH BUXTON & TURCKE, CHTD.

By: 

Bruce M. Smith
Attorney for Allen Ranch LLP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28 day of October, 2013, I caused to be served a true and correct copy of the foregoing **APPLICANT'S RESPONSE TO PROTESTANT WEST MOUNTAIN WATER ASSOCIATION, INC.'s MOTION FOR STAY OF ADMINISTRATIVE PROCEEDINGS** via prepaid, U.S. Mail, to the following:

Original to: (Via Facsimile)

Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, ID 83720-0098

Copies to: (Via First Class U.S. Mail)

John Westra
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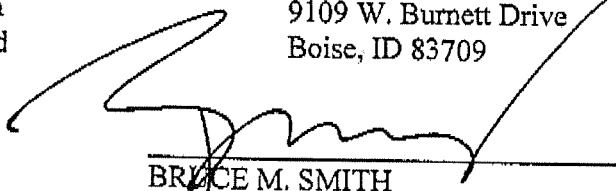
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FACSIMILE COVER SHEET

DATE: October 28, 2013 RECIPIENT'S FAX: 287-6700
TO: IDWR CLIENT: 1752-00
RE: Allen Ranch LP - Permit No.65-23493 and Transfer No. 78252
FROM: Bruce M. Smith/Kat

NUMBER OF PAGES INCLUDING THIS COVER SHEET: _____

☒ ORIGINAL WILL NOT BE SENT
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ADDITIONAL COMMENTS:

Please file with IDWR. Thank you.

***** IMPORTANT MESSAGE *****

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