

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR	)	ORDER DENYING MOTION TO
TRANSFER NO. 78252 IN THE NAME OF	)	CONTINUE AND DENYING
ALLEN RANCH LLP	)	MOTION FOR STAY OF
	)	ADMINISTRATIVE PROCEEDINGS
_____	)	

PROCEDURAL AND FACTUAL HISTORY

1. On May 29, 2012, Allen Ranch LLP, (“Allen Ranch”) applied to the Idaho Department of Water Resources (“Department”) to add points of diversion to Water Right No. 65-3111X. The Department designated the transfer application as Application No. 78252 (“Allen transfer”).
2. The following parties protested the Allen transfer:
 - Sandra M. Chess
 - Joyce Ford and/or Glenn Ford
 - Jim Bunce
 - West Mountain Water Association, Inc.
 - West Mountain Properties LLC
 - Cris McClintick
 - Randy McClintick
3. For the past two irrigation seasons, the Department has been called upon numerous times to mediate a dispute between Allen Ranch and others, including some of the protestants, over the use of one of the additional points of diversion proposed in the Allen transfer.
4. The Department scheduled a hearing to be held beginning December 10, 2013, to take testimony and evidence from Allen Ranch and the protestants in connection with the Allen transfer. The hearing will also address Application for Permit No. 65-23493, which was filed by Allen Ranch and protested by the same parties who protested the Allen transfer.
5. On October 2, 2013, Allen Ranch filed its *Rule 60(b) Motion for Relief from Judgment* concerning Water Right No. 65-3111X with the Snake River Basin Adjudication (“SRBA”) District Court. Allen Ranch’s motion asks the SRBA District Court to set aside its prior decree of Water Right No. 65-3111X so that it can add a previously omitted point of diversion. The SRBA Court set a hearing for January 21, 2014, in connection with this motion.
6. The Department has received and reviewed the following documents in connection with the Allen transfer:

- *Motion to Continue* filed by Sandra M. Chess
- *Motion for Stay of Administrative Proceeding* (“*Motion for Stay*”) filed by West Mountain Water Association, Inc.
- *Applicant’s Response to Protestant Sandra Chess’ Motion to Continue* filed by Allen Ranch LLP
- *Applicant’s Response to Protestant West Mountain Water Association, Inc.’s Motion for Stay of Administrative Proceedings* filed by Allen Ranch LLP
- *Clarification in support of Motion to Continue per Allen Ranch LLP’s response of Oct. 28, 2013* filed by Sandra M. Chess

7. In her *Motion to Continue*, Sandra Chess asserts that it would be a duplicative waste of effort for the Department to hold a hearing to address the Allen transfer when some of the changes requested in the Allen transfer may also be addressed by the SRBA District Court. The arguments in West Mountain Water Association, Inc.’s *Motion for Stay* are similar and are summarized in two quotes:

It is possible that, if this proceeding is not stayed, the SRBA District Court and IDWR will reach differing conclusions on the issue – throwing the proceedings into chaos. (*Motion for Stay*, p. 2-3)

Concurrent judicial and administrative proceedings are wasteful of administrative, judicial and party resources. (*Motion for Stay*, p. 3)

CONCLUSIONS OF LAW

The Department is usually reluctant to engage in administrative processes that run concurrently with judicial processes on the same water right. As indicated in the *Motion for Stay*, differing results in the two processes could cause confusion. Consequently, the Department would not proceed with the hearing on the Allen transfer without good reason. However, there are three good reasons for the Department to hold its hearing in December.

First, because of the longstanding controversy surrounding the point or points of diversion for Water Right No. 65-3111X, the Department wants to resolve this matter as quickly as possible, preferably before the beginning of another irrigation season.

Second, the judicial process and the administrative process do not address exactly the same issue. The judicial process will determine the points of diversion for Water Right No. 65-3111X based on historical evidence. The administrative proceeding will determine whether Allen Ranch may add new points of diversion in the future. Even if the SRBA Court does not grant Allen Ranch’s request to add another point of diversion to Water Right No. 65-3111X, the Department may still rule on whether Allen Ranch has permission to add the same point as a new point of diversion in the future.

The SRBA court will not likely resolve the dispute over the authorized points of diversion for Water Right No. 65-3111X in January. Either the Court will deny the motion before it, in which

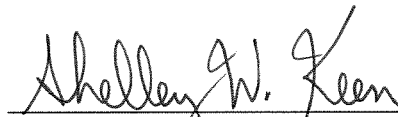
case IDWR must still address the Allen transfer, or it will grant the motion and schedule at least one further hearing to consider the evidence. If the SRBA court grants the motion and schedules a hearing to consider the evidence, it still could rule against Allen Ranch, in which case IDWR must still address the Allen transfer. By that time, there is a good chance that the 2014 irrigation season will have commenced. If the SRBA Court grants the motion, holds a hearing, and rules in favor of Allen Ranch, the Department must still address the Allen transfer because it proposes to add two points of diversion, not just the one to be addressed in the SRBA. By conducting its hearing in December, the Department will put the parties in the best possible position for speedy resolution of their dispute. If the Department denies the Allen transfer, then no further proceedings will be needed after the SRBA court makes its ruling, unless the Department's ruling is appealed. If the Department approves the Allen transfer, the SRBA court proceeding may be entirely unnecessary.

And third, because the parties are the same for the Allen transfer as for Application for Permit No. 65-23493, and much of the testimony is likely to be duplicative in these two matters, it will be most efficient to convene this group of parties only one time for a single, consolidated hearing.

ORDER

1. The *Motion to Continue* filed by Sandra Chess is **DENIED**.
2. The *Motion for Stay* filed by West Mountain Water Association, Inc., is **DENIED**.

Dated this 5th day of November, 2013.



Shelley W. Keen
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2013, I mailed a true and correct copy, postage prepaid, of the foregoing ORDER DENYING MOTION TO CONTINUE AND DENYING MOTION FOR STAY OF ADMINISTRATIVE PROCEEDINGS to the person(s) listed below:

RE: Transfer No. 78252 65-3111X

**SANDRA CHESSE
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CASCADE ID 83611**

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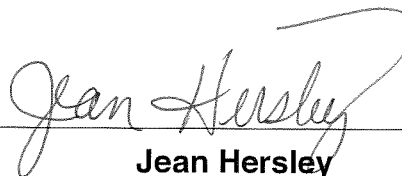
**WEST MOUNTAIN WATER ASSOCIATION INC
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**WEST MOUNTAIN PROPERTIES LLC
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A handwritten signature in cursive script, reading "Jean Hersley", is written over a horizontal line.

Jean Hersley

Technical Records Specialist II