

CHARLES L. HONSINGER (ISB #5240)
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RECEIVED
OCT 08 2013
WATER RESOURCES
WESTERN REGION

Attorney for Protestant West Mountain Water Association, Inc.

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO.)
78252 AND APPLICATION FOR PERMIT) AFFIDAVIT OF CHARLES L.
NO. 65-23493 IN THE NAME OF ALLEN) HONSINGER IN SUPPORT OF MOTION
RANCH, LLP) FOR STAY OF ADMINISTRATIVE
) PROCEEDING
)
_____)

STATE OF IDAHO)
) ss
COUNTY OF ADA)

CHARLES L. HONSINGER, being first duly sworn upon his oath, deposes and says that:

1. I am the attorney for West Mountain Water Association, Inc., the Protestant in the above-entitled action, and make this affidavit based upon my own personal knowledge and belief of the facts contained herein.

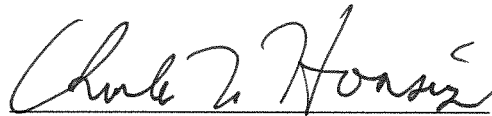
2. Attached hereto as Exhibit 1 is a true and accurate copy of the Affidavit of Bruce M. Smith lodged by Allen Ranch, LLP in Snake River Basin Adjudication District Court ("SRBA") subcase no. 65-3111X to which is attached a copy of the decree for water right no. 65-3111X issued by the SRBA.

3. Attached hereto as Exhibit 2 are true and accurate copies of the Rule 60(b) Motion

for Relief from Judgment, Memorandum in Support of Rule 60(b) Motion for Relief from Judgment, Affidavit of J.R. Allen, Affidavit of Bill Leslie, Affidavit of John Kwader, and Affidavit of Dr. David R. Tuthill, Jr., all of which have been filed or lodged by Allen Ranch LLP in SRBA subcase no. 65-3111X.

4. Attached hereto as Exhibit 3 is a copy of the Notice of Hearing on Rule 60(b) Motion for Relief from Judgment issued by the SRBA District Court in subcase no. 65-3111X.

Further your affiant sayeth naught.

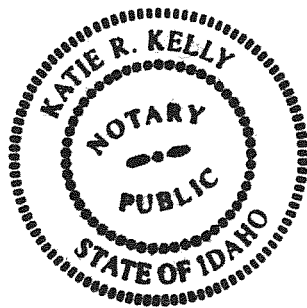


Charles L. Honsinger

STATE OF IDAHO)
)ss.
County of ADA)

On this 8th day of October, 2013, before me, the undersigned, a notary public in and for said state, personally appeared Charles L. Honsinger, known to me to be the individual that executed the foregoing affidavit, and acknowledged to me that he executed the same.

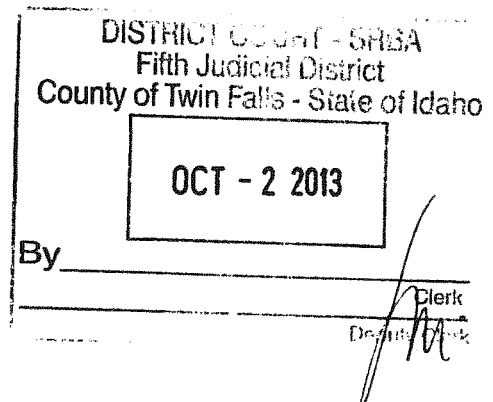
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Notary Public for Idaho
Residing at Oasis, Idaho
My Commission Expires: 2/20/14

Exhibit 1

Bruce M. Smith, ISB#3425
MOORE SMITH BUXTON & TURCKE, CHTD.
950 West Bannock Street, Suite 520
Boise, ID 83702
Telephone: 208-331-1800
Facsimile: 208-331-1202
Email: bms@msbtlaw.com



Attorney for J. R. ALLEN/ALLEN RANCH LLP

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re Snake River Basin Adjudication)
Case No. 39576)

Subcase No: 65-3111X

AFFIDAVIT OF BRUCE M. SMITH

STATE OF IDAHO)
) ss.
County of Ada)

COMES NOW, BRUCE M. SMITH and declares as follows:

1. I am over the age of eighteen and make the following statements based on my own personal knowledge.
2. I am counsel for J.R. Allen and Allen Ranch LLP in the above matter.
3. Attached hereto as Exhibit "A" is a true and correct copy of the Partial Decree issued by this Court in the above referenced matter on October 31, 2000.
4. Attached hereto as Exhibit "B" is a true and correct copy of the SRBA Subcase Summary Report for Water Right No. 65-3111X.

ORIGINAL

5. Attached hereto as Exhibit "C" is a true and correct copy of the SRBA Director's Report for Water Right No. 65-3111X.

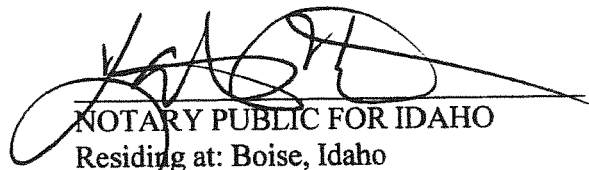
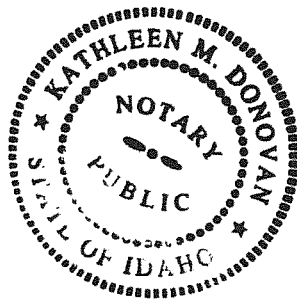
FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 30th day of September, 2013.



BRUCE M. SMITH

SUBSCRIBED AND SWORN to before me this 30th day of September, 2013.



NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My Commission Expires: 08/08/2018

2000 OCT 31 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 65-03111X

NAME AND ADDRESS: E K ALLEN RANCHES INC
11217 HWY 55
CASCADE, ID 83611

SOURCE: UNNAMED STREAM TRIBUTARY: CASCADE RESERVOIR
QUANTITY: 2.70 CFS

THIS RIGHT SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE WHEN
MEASURED AT FIELD HEADGATE.

PRIORITY DATE: 06/01/1894

POINT OF DIVERSION: T13N ROSE S03 NWSE Within Valley County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-15	2.70 CFS

PLACE OF USE:	Irrigation	Within Valley County
	T13N ROSE S03 LOT 08 (NENE)23.0 SUNE 8.0	LOT 07 (NENE)21.0 SENE 31.0
	83.0 Acres Total	

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

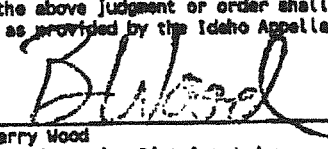

Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

EXHIBIT "A"

SRBA

SUBCASE SUMMARY REPORT 65-03111X

[Return to SRBA Home Page](#)

SRBA
09-27-2013

SUBCASE SUMMARY REPORT

HTML12

SUBCASE: 65-03111X FILE#: 01040
CLAIMANT: E K ALLEN RANCHES INC
11217 HWY 55

CASCADE ID 83611
STATUS: PD ISSUED SPECIAL MASTER:
WATER SOURCE: UNNAMED STREAM TRIBUTARY: CASCADE RESERVOIR

**** PARTIES INVOLVED ****

E K ALLEN RANCHES INC C PRO SE

**** ROA ENTRIES ****

10-31-2000 PARTIAL DECREE FILED

10-31-2000

[Return to SRBA Home Page](#)

EXHIBIT "B"

SRBA

DIRECTORS REPORT 65-03111X

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IWT072

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 65-03111X

Name and Address: E K ALLEN RANCHES INC
11217 HWY 55
CASCADE, ID 83611

Source: UNNAMED STREAM Tributary: CASCADE RESERVOIR

Quantity: 2.70 CFS

THIS RIGHT SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE WHEN
MEASURED AT FIELD HEADGATE.

Priority Date: 06-01-1894

Diversion Point: T13N R03E S03 NWSE Within Valley County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	Irrigation	04-15 TO 10-15	2.70 CFS

Place of Use:	Irrigation	Within Valley County
	T13N R03E S03 LOT 8 (NENE) 23 LOT 7 (NWNE) 21	
	SWNE 8 SENE 31	
	83 Acres Total	

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - Decreed

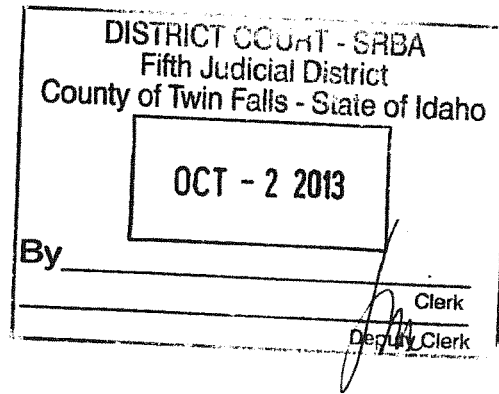
SOURCE IS ALSO KNOWN AS RICHARD CREEK.
SOURCE IS ALSO KNOWN AS ROCK CREEK.

Return to SRBA Home Page

EXHIBIT "C"

Exhibit 2

Bruce M. Smith, ISB #3425
MOORE SMITH BUXTON & TURCKE, CHTD.
Attorneys at Law
950 W. Bannock, Suite 520
Boise, ID 83702
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Attorney for Allen Ranch LLP

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE: SRBA	)	SUBCASE NO. 65-3111X
	)	
CASE NO. 39576	)	RULE 60(b) MOTION FOR
	)	RELIEF FROM JUDGMENT
	)	
	)	

COMES NOW, E.K. Allen Ranch LLP ("Allen Ranch" or "Claimant"), by and through undersigned counsel of record, Bruce M. Smith of Moore Smith Buxton & Turcke, Chtd., and pursuant to Administrative Order 1, Section 14(d) and Idaho Rule of Civil Procedure 60(b), and hereby requests that this Court set aside its Final Order, dated October 31, 2000 decreeing Water Right Claim No. 65-3111X. The reason for the motion is to correct the point of diversion for this claim by allowing addition of an omitted historical point of diversion. This motion is brought on the grounds that good cause justifies relief from the operation of the Court's October 31, 2000 Order.

This motion is supported by the memorandum of points and authorities filed contemporaneously herewith, and by the Affidavits of Mr. J.R. Allen, Dr. David Tuthill, Mr. Bill Leslie, Mr. John Kwader, and Mr. Bruce M. Smith also filed contemporaneously herewith.

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Respectfully submitted this 30th day of September, 2013.

MOORE SMITH BUXTON & TURCKE, CHTD.

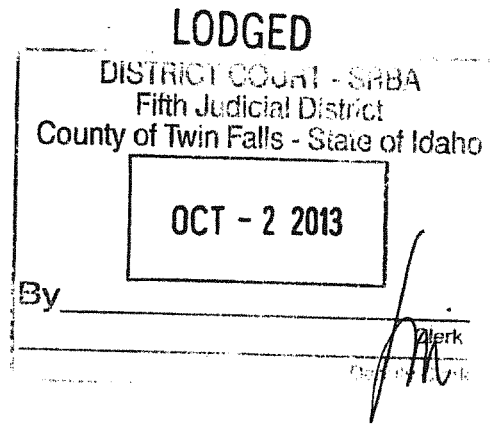
A handwritten signature in black ink, appearing to read 'B. Smith', written over a horizontal line.

By: _____

Bruce M. Smith
Attorney for Allen Ranch LLP

Bruce M. Smith, ISB #3425
MOORE SMITH BUXTON & TURCKE, CHTD.
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Attorney for Allen Ranch LLP



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE: SRBA	)	SUBCASE NO. 65-3111X
	)	
CASE NO. 39576	)	MEMORANDUM IN SUPPORT
	)	OF RULE 60(b) MOTION FOR
	)	RELIEF FROM JUDGMENT
	)	

I.
BACKGROUND

E.K. Allen Ranch LLP ("Allen Ranch" or "Claimant") seeks relief from this Court's Final Order decreeing Water Right Claim No. 65-3111X ("Order"), filed October 31, 2000. *See* Affidavit of Bruce M. Smith, Exhibit "A". There were no objectors to the claim. *Id.* The Court's Order decreed Water Right Claim No. 65-3111X (the "Right") for irrigation purposes by diversion of water from an unnamed stream in Valley County, Idaho.¹ The ultimate relief sought by Allen Ranch is to have the decree acknowledge an additional point of diversion for the Right that was omitted in the Payette River Adjudication and inadvertently carried through to the SRBA. The omitted point of diversion dates back for decades when the Allen Ranch property was first homesteaded.

¹ The stream has subsequently been identified as Rock Creek.

Allen Ranch seeks relief from the Court's Order under Administrative Order 1, Section 14(d), and Idaho Rule of Civil Procedure 60(b)(6) because: (1) the evidence through sworn affidavits in support of this motion confirms the existence and use of the historical point of diversion; (2) Dr. David Tuthill, the IDWR supervisor in charge of the Payette Adjudication points out in his affidavit that the omitted point of diversion constitutes an error carried through to the Snake River Basin Adjudication from the Payette Adjudication and is "simply an error that can and should be rectified;" and (3) the point of diversion has been used by the Allen Ranch continuously from its development up to this year.

Mr. J.R. Allen is the general partner of Allen Ranch LLP in Valley County, Idaho. Allen Aff., ¶ 1. The ranch has been in his family dating back to his grandfather's homesteading the area in about 1913. *Id.* at ¶ 2-3. Allen Ranch Water Right No. 65-3111X was decreed in the SRBA for 2.7 cfs for irrigation of 83 acres on October 31, 2000. *Id.* at ¶ 4. The SRBA decree was based on a claim filed in the Payette Adjudication. *Id.* The Payette Adjudication claim was based on a 1930 decree in *Allen vs. Withers*. *Id.*

Because of the geography of the Allen Ranch, the north part of the ranch (referred to as the "Home Place") is irrigated from Little Rock Creek while the southern portion is irrigated from Rock Creek. *Id.* at ¶ 6. Mr. Allen's grandfather constructed an irrigation diversion and ditch which allowed water from Rock Creek to be conveyed to Little Rock Creek and then to the Home Place because water from Rock Creek could not be delivered to the Home Place due to a hill separating the Home Place from the southern portion of the ranch. *Id.* at ¶ 7. The diversion, referred to as the Upper Diversion, has been in

existence at least since 1915-1920. *Id.* For reasons unknown, this diversion which was identified in the *Allen vs. Withers* decree was omitted from the Payette Adjudication Claim, and was carried through to the SRBA decree. This error was discovered after the SRBA Final Order was issued. Years ago, some of the Allen land was sold to a developer who created lots which were sold to homeowners. *Id.* at ¶ 9. Some of the homeowners recently began to question Allen Ranch's historical diversion of water from Rock Creek to Little Rock Creek using the Upper Diversion. *Id.* Until this happened, no one realized the point of diversion had been omitted.

Mr. Allen's investigation has revealed the Upper Diversion was somehow left off the Payette Adjudication claim. *Id.* This omission was then carried forward into the SRBA and the SRBA partial decree that was issued October 31, 2000. *Id.* Notwithstanding the omission of the point of diversion from the Payette Adjudication and SRBA decree, the use of the diversion has been ongoing and continuous. *Id.* at ¶ 10.

Mr. Allen's investigation included locating the Court Decree in the matter of *Allen vs. Withers*. *Id.* at ¶ 11. This decree references the Upper Diversion as being in existence in 1931 and includes a map clearly depicting the Upper Diversion and associated ditch which connects Little Rock Creek to Rock Creek. *Id.*

Mr. Allen's investigation involved more than simply finding historical information included in the *Allen vs. Withers* decree. He has obtained affidavits of Mr. Bill Leslie and Mr. John Kwader, both old time residents of the area, which independently confirm the historical existence of the Upper Diversion.

In addition, Mr. Allen sought the help of Dr. David Tuthill to help explain the omission of the Upper Diversion from the Payette Adjudication and the SRBA. Dr.

Tuthill is not an ordinary witness. Dr. Tuthill is a former Director of the Idaho Department of Water Resources, and was in charge of the Payette Adjudication. Tuthill Aff. ¶ 4. Dr. Tuthill has provided a very detailed explanation of the process used in the Payette Adjudication to investigate and recommend water rights in the Payette and SRBA adjudications. *Id.* at ¶ 7-9. Dr. Tuthill also explains his own personal investigation into the omission of the Upper Diversion from Allen Ranch's water right. *Id.* at ¶ 10-11. Dr. Tuthill confirms the Upper Diversion as existing in 1932. *Id.* at ¶ 12. He also explains there are no clear records as to why the Upper Diversion was omitted in the Payette Adjudication. *Id.* However, Dr. Tuthill explains that this was simply an error whose origin and cause are not explainable, and therefore, fault should not be attributable to anyone. *Id.* Dr. Tuthill points out the omission was "simply an error that should be acknowledged and corrected." *Id.* Dr. Tuthill's expertise and unique position with regard to this issue should confirm for the Court that this is one of those rare situations that calls for the Court to also acknowledge that errors do occur and to rectify the problem.

II. LEGAL STANDARDS

Rule 60(b) provides, in relevant part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or **(6) any other reason justifying relief from the operation of the judgment.** The motion shall be made

within a reasonable time, and for reasons (1), (2), and (3) not more than six (6) months after the judgment, order, or proceeding was entered or taken.

Idaho Rule of Civil Procedure 60(b) (emphasis added).

“Rule 60 provides the only avenue of relief from final civil judgments other than by appeal or independent action.” *Lubben vs. Selective Serv. Sys. Local Bd. No. 27*, 453 F.2d 645, 648 (1972). The Rule “requires a showing of good cause and specifies particular grounds upon which relief may be afforded.” *Lowe vs. Lym*, 103 Idaho 259, 646 P.2d 1030 (Ct. App. 1982). Whether to grant relief under Rule 60(b) rests in the sound discretion of the trial court. *Johnston vs. Pascoe*, 100 Idaho 414, 599 P.2d 985 (1979). “[A] Rule 60(b) motion to vacate is not a substitute for an appeal.” *Dustin vs. Beckstrand*, 103 Idaho 780, 654 P.2d 368 (1982); *De Filippis vs. United States*, 567 F.2d 341, 342 (7th Cir. 1977) (citing *Ackermann vs. United States*, 340 U.S. 193, 198, 72 S.Ct. 209, 211 (1950)).

“I.R.C.P. 60(b)(6), which is the catchall for the rule, was not intended to allow a court to reconsider the legal basis for its original decision.” *First Bank & Trust of Idaho vs. Parker Bros., Inc.*, 112 Idaho 30, 32 (1986). A party making a Rule 60(b)(6) motion must demonstrate unique and compelling circumstances justifying relief. *Matter of Estate of Bagley*, 117 Idaho 1091, 1094 (Ct. App. 1990) (citing *Puphal vs. Puphal*, 105 Idaho 302 (1983)).

Allen Ranch submits that this case presents sufficient good cause justifying relief from the Court.

III. ARGUMENT

A. The evidence confirms the historical Upper Diversion.

Mr. Allen's affidavit and supporting documents, as well as the supporting affidavits of Bill Leslie and John Kwader, do two things: (1) they confirm the long term existence of the Upper Diversion, and (2) they establish the continuous use of the Upper Diversion since it was developed. Mr. Allen also explains the necessity of the Upper Diversion because the geography of the ranch is such that the Home Place, the northern portion of the ranch, cannot be irrigated without using the Upper Diversion. The Payette Adjudication claim, Exhibit "1" to Mr. Allen's affidavit, does not show a signature by Mr. Allen's father or grandfather, but rather initials of unidentified individuals. However, the claim has multiple notations on it that indicate the claim form was initialed at least three different times.

Mr. Allen explains in his affidavit that it was likely his father who submitted the claim in the Payette Adjudication. Mr. Allen's father would not have likely understood that the written legal description of the point of diversion did not coincide with the physical location. However, his father would have definitely understood the physical location since he actually helped construct it.

Dr. Tuthill also explains that "misunderstandings and the location of a diversion by a legal description is not an unheard of problem in some of the older adjudication proceedings." Tuthill Aff. ¶ 10. Similarly, in the Payette Adjudication, the IDWR staff attempted to create maps but sometimes points of diversion were inadvertently omitted from the maps. *Id.* Dr. Tuthill also points out the Upper Diversion is located in a

forested area and the IDWR hydrographic surveyor thus might have missed seeing it. *Id.* In addition, maps sometimes did not coincide with legal descriptions. *Id.* Further, it is possible the map for the *Allen vs. Withers* decree, which clearly depicts the Upper Diversion, might not have been available to the hydrographer. *Id.* Dr. Tuthill says he believes the Upper Diversion was simply overlooked in the initial hydrographic survey because the diversion is clearly shown on the *Allen vs. Withers* map. *Id.* Dr. Tuthill, who was in charge of the Payette Adjudication, points out there is no information as to how the point of diversion was omitted, but it was. *Id.* at ¶ 12. Importantly, Dr. Tuthill acknowledges this as an error that should be rectified. This Court can do so by setting aside the partial decree and allowing the Upper Diversion point to be added to Water Right No. 65-3111X.

Allen Ranch needs the Upper Diversion to irrigate and water livestock on the Home Place portion of the ranch. Allen Ranch is not seeking anything that has not been in place for decades as to the existence or operation of the diversion. Allen Ranch does not seek more water or any other changes to the decree issued on October 31, 2000, other than to add the historical point of diversion. Mr. Allen has gone to great lengths to diligently investigate and seek to uncover a complete explanation for the omission. Despite the absence of information as to why or how the omission occurred, Allen Ranch has procured affidavits of longtime residents who are personally aware of the existence of the diversion, the map of the diversion from the early *Allen vs. Withers* decree, and the help and opinion from Dr. Tuthill as to how the omission might have occurred both at the individual as well as the IDWR level. Allen Ranch believes this record clearly

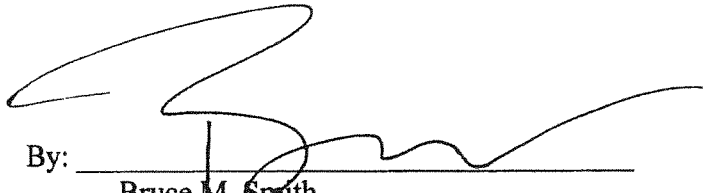
establishes the requisite good cause that would justify the Court setting aside the partial decree to allow the diversion point to be acknowledged.

**IV.
CONCLUSION**

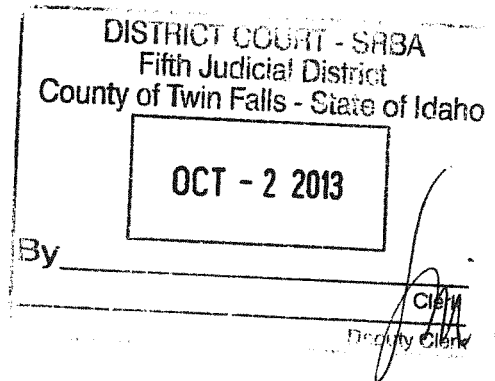
Allen Ranch requests the Court exercise its discretion pursuant to IRCP 60(b)(6) in order to allow the addition of the Upper Diversion to the Water Right Claim No. 65-3111X.

Respectfully submitted this 30th day of September, 2013.

MOORE SMITH BUXTON & TURCKE, CHTD.

By: 
Bruce M. Smith
Attorney for Allen Ranch LLP

Bruce M. Smith, ISB#3425
MOORE SMITH BUXTON & TURCKE, CHTD.
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Email: bms@msbtlaw.com



Attorney for J. R. ALLEN/ALLEN RANCH LLP

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re Snake River Basin Adjudication)
Case No. 39576)

Subcase No: 65-3111X

**AFFIDAVIT OF J.R. ALLEN IN
SUPPORT OF MOTION TO
REOPEN DECREE TO CORRECT
POINT OF DIVERSION**

STATE OF IDAHO)
) ss.
County of Ada)

COMES NOW, J. R. ALLEN and declares as follows:

1. My name is J.R. Allen. I am over the age of 18 and I make the following statement based on my own personal knowledge.
2. I am the general partner in Allen Ranch LLP. Through the partnership, I own a ranch in Valley County, Idaho, near Lake Cascade. The ranch is primarily a cattle ranch on which my father and grandfather and I have historically run cattle and now lease grazing rights to other ranchers for grazing.
3. My father and my grandfather ran the ranch before me. The family ownership dates

ORIGINAL

to about 1913 when the land was homesteaded.

4. Allen Ranch has water right 65-3111X which was decreed in the Snake River Basin Adjudication for 2.7 cfs for irrigation of 83 acres during the period 4/15-10/15. The Snake River Basin Adjudication decreed right came from a claim originally filed in the Payette adjudication. The Payette Claim was based on rights established under the 1930 *Allen v. Withers* decree. I believe my father or grandfather helped file the Payette claim. Attached as Exhibit 1 is a copy of the Payette claim from Idaho Department of Water Resources records.

5. The ranch has an upper area on the north end of the ranch that we call the Home Place. There is a ridge between the northern part of the ranch and the southern part.

6. The ranch has always been irrigated since it was homesteaded. As far back as I can remember, the northern part of the ranch, the Home Place, was irrigated from what was known as Little Rock Creek. The southern part of the ranch was irrigated from Rock Creek. Because Rock Creek has greater flows, my grandfather and his friends constructed a diversion and ditch to convey water from Rock Creek to Little Rock Creek. This has always been referred to as the Upper Diversion. The water from Rock Creek diverted through the Upper Diversion then went down Little Rock Creek to irrigate the Home Place and to water livestock.

7. The reason water is conveyed in Little Rock Creek through the Upper Diversion is because, physically, water from Rock Creek cannot be conveyed to the Home Place from the lower reaches of Rock Creek because that would require water to run uphill. The Upper Diversion has been in place since at least 1915 – 1920.

8. In the 1950's, my father sold off some of the ranch and conveyed a small portion of the water right to the purchasers.

9. The sold off part of the ranch was subdivided into lots and sold to individual homeowners. In the past few years some of the homeowners have begun to complain about the diversion of water from Rock Creek to Little Rock Creek for irrigation of the Home Place because they want water left in Rock Creek for their enjoyment notwithstanding the impacts on my ranch. Because of these complaints, I have undertaken to establish that the Upper Diversion is in fact a historical diversion point that has been used since my family homesteaded. My investigation has revealed an error in the claim in the Payette Adjudication in that the Upper Point of diversion was left off. This error was then continued through into the Snake River Basin Adjudication so that the final decree left off the point of diversion.

10. I believe my grandfather or father was involved in submitting the original claim in the Payette Adjudication. However, neither of them would likely have been able to distinguish the legal description of the point of diversion from the actual physical location. They would not likely have had the tools or resources to verify a legal description in those days. However, both of them would definitely know the physical location since they built and worked on the diversion. Since learning of this error, I have worked diligently to try to figure out exactly what happened that would have caused the point of diversion to be omitted. I have talked to a couple of long term residents who confirmed the location and existence of diversion and sought the help of Dr. Tuthill who was in charge of the Payette Adjudication.

11. The conveyance of water from Rock Creek to Little Rock Creek through the Upper Diversion to irrigate the Home Place and water livestock has been ongoing and continuous since long before any lots were sold or houses built. It has continued to the present.

12. Attached as Exhibit 2 is a Court Decree from 1931 known as the *Allen vs. Withers*

Decree. This Decree in paragraph 2 references the Upper Diversion as being in existence in 1931. Exhibit 3 is a map referencing the same case showing the Upper Diversion ditch that conveys water from Rock Creek to Little Rock Creek.

13. Because of the complaints from some of the homeowners about the diversion and use of water, the Idaho Department of Water Resources began looking at the records regarding 65-3111X as well as Water Right 65-3111A, which was a split from the original right for the ranch. Water Right 65-3111A is held by the homeowners association for the area of the ranch that was sold off. The Idaho Department of Water Resources review showed the points of diversion for both rights were incorrect.

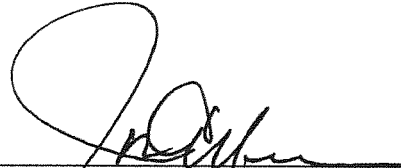
14. I am requesting the Court to set aside the decree for my water right for the limited purpose of correcting the point of diversion so that the historical point of diversion is on the decree. The point of diversion is critical to the historical and present irrigation of the ranch and the watering of livestock.

15. Attached as Exhibits 4 and 5 are Affidavits from Bill Leslie and John Kwader, both long time residents of Cascade who attest to the existence of the point of diversion and their personal knowledge of it.

16. Attached as Exhibit 6 is the Affidavit of Dr. David Tuthill who has also helped with my investigation about how the point of diversion was erroneously omitted. Dr. Tuthill was actually in charge of the Payette Adjudication for IDWR. Dr. Tuthill has determined the point of diversion was simply left off the Payette and SRBA claims and decrees by error. Further, there is no evidence that the omission was anything but an error. I am asking the Court to help correct this error by allowing the point of diversion to be included on my water right.

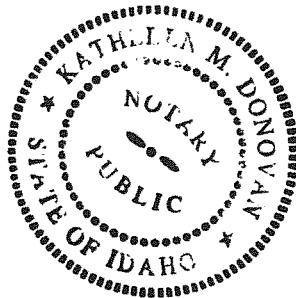
FURTHER YOUR AFFIANT SAYETH NOT.

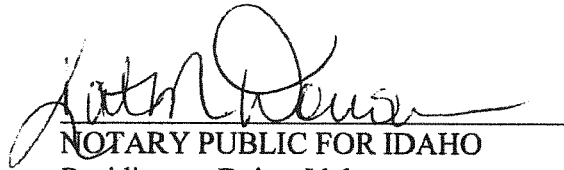
DATED this 29 day of August, 2013.



J. R. Allen

SUBSCRIBED AND SWORN to before me this 29th day of August, 2013.





NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My Commission Expires: 08/08/2018

IN THE DISTRICT COURT OF THE JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF

IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF
DRAINAGE BASIN, WATER RIGHT

RECEIVED
J. D. No. 10-18-78
Fee Paid
Receipt No.

Notice is hereby given that E. V. Allen claims a right to the diversion and beneficial use of the surface or groundwater, or of tributary to Donner

The extent and nature of said claim is as follows: Donner

(1) Date of priority: (When was the water first applied to a beneficial use, or priority date of demand, license or permit right) 6/1/1894

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water) Donner Creek (Richardson Creek) ditch

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed: Donner

Quantity 2000 Use Donner Period of Use From 4/15 To 10/15

Quantity 2000 Use Donner Period of Use From 4/15 To 10/15

Quantity 2000 Use Donner Period of Use From 4/15 To 10/15

(4) TOTAL QUANTITY CLAIMED: 2000

A) Point of Diversion: Give location of point where water is diverted from its source NE SE

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Donner

(5) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box, if use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NEW	NW1/4	SW1/4	SE1/4	TOTAL
120	3E	3	33	34	35	36	33

Total No. of acres 33

B) If water is used for other than irrigation, fully describe that use, being as specific as possible.

(7) Effluent, sewage waste, or return water from this use is discharged into

(8) If you are claiming water as a member of an organization, list name of organization.

(9) Remarks THIS DITCH WHEEL CLAIMED WITH RIGHT OF THE STATE

(10) Basis of claim (Check one) ☒ A) Right based on diversion and beneficial use Allen Vs. Wiggins

☐ B) Right decreed by court, cite title of case.

☐ C) Right based on application, permit, license, or claim filed with the Idaho Department of Water Resources.

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

State of Idaho County of Donner

On this 10-18-78 day of October, 1978, before me, a notary public, personally appeared E. V. Allen, known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they) executed the same.

My commission expires 10-18-78

EXHIBIT 1

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

MARY R. ALLEN
D. K. ALLEN
Plaintiffs

-vs-

W. H. WITHERS
MAUD WITHERS
Defendants

D E C R E E

FINDINGS and CONCLUSIONS

of

COMMISSIONER OF RECLAMATION

Re: DISTRIBUTION AND USE OF WATER
FROM IDAHO'S SEVENTH JUDICIAL DISTRICT

The complaint of Defendant WITHERS in the above entitled action with reference to the distribution and use of water under the decree: After examination on the ground and from the testimony of the plaintiff and the defendant in the above entitled action, together with that of other parties having knowledge of the facts, this department has arrived at the following findings-of-fact and conclusions as to the rights, duties, and obligations of the respective parties, to-wit:

1. That the State Commissioner of Reclamation of the State of Idaho is the public official having jurisdiction over the distribution and diversion of the water under and pursuant to the terms of the decree herein;

EXHIBIT 2

7-15-52

2. That inasmuch as at the present time there are only about 40 inches of water in ROCK CREEK at Plaintiff ALLEN's upper diversion, whereas he has a prior decree for 160 inches, Defendant WITHERS has no right nor interest in or to the natural flow of ROCK CREEK at this time;
3. That LITTLE ROCK CREEK is not a tributary of ROCK CREEK and that Defendant WITHERS has a prior right under the decree to divert and use all of the water of LITTLE ROCK CREEK up to the amount of his decree, to-wit: 80 miner's inches;
4. That Plaintiff ALLEN has no right to divert and transfer water decreed to him for use upon a specific tract of land to other lands without securing a permit for such transfer from this department, which permit can be secured only by due process of law, with a showing that such diversion would not damage another appropriator;
5. That in this instance the diversion of water from the specific tract of land to which it was decreed to Plaintiff ALLEN for use upon other land would be a damage to Defendant WITHERS for the reason that in regular course and incident to the irrigation of such land said WITHERS now receives the benefit of the use of the return flow, seepage, and percolating waters from the irrigation of the land to which it was decreed, of which use he would be deprived by such change of place of use;

EXHIBIT 2

7-15-92

"A change of place of use of the water will not be permitted where to do so would damage another appropriator." Hall -vs- Blackman (22 Idaho 556)

8. That one WESLEY HARTLEY, who has attempted to divert, and in fact has actually diverted, water from LITTLE ROCK CREEK to irrigate what is known as the WORTHINGTON lands, was not, nor was his predecessor-in-interest, a party to the above entitled action, and the records of this office do not disclose that he has any right, title or interest in and to the waters of LITTLE ROCK CREEK or to any of the stream mentioned in the decree, so it would seem that by his action he is liable to prosecution for unlawful diversion of water and would be liable in damages to any one injured by his acts, but that is a matter outside of the jurisdiction of this department.

It is assumed that both the plaintiff and the defendant in the above entitled action have copies of the decree in their possession and are familiar with the terms and conditions and requirements thereof, but at this time this department desires to call special attention to the following provisions of the decree:

"IV.

That each of the parties hereto, their agents, servants, employees, successors, and all persons acting in their behalf, or on behalf of either of them, be perpetually enjoined from in any manner interfering with the rights of the other parties hereto to the use of said waters, and in any manner interfering with the ditches, canals, laterals, or other means of diversion or distribution of said waters;

V.

That a miner's inch of water, as herein mentioned, is equivalent to a full 1/50 cubic foot of water per second.

EXHIBIT 2

7-15-32

VI.

That the parties to whom rights are herein allotted and their successors-in-interest shall, at their own cost and expense, install and maintain suitable and efficient headgates, controlling works, and measuring devices at their respective points of diversion from the streams from which water is diverted by them, and all waters herein allotted and decreed shall be measured at said points of diversion; said works and devices shall be built, installed and maintained in accordance with plans and specifications to be approved by the official charged by law with the duty of supervising the distribution of water; all such devices shall be of such design as to accurately measure the water diverted; all such headgates, control works, measuring devices and gauges shall, at all times, be subject to inspection by any party hereto and by the public officials or watermasters having jurisdiction over the distribution and diversion of the waters, and no dam or other obstruction to the natural flow of either of the streams from which water is taken shall be maintained so as to divert water from the channel thereof except through ditches, canals or other works provided with such headgates, control works, and measuring devices; each of the parties hereto is hereby perpetually enjoined from diverting from the channel of either of said streams any water to any ditch, conduit or other device not provided with such headgates, control works and measuring devices."

Under and pursuant to the terms and conditions of the decree and of Section 5617, Idaho Compiled Statutes, as amended by Chapter 19 (Senate Bill No. 21), Session laws of 1927, all parties-in-interest are hereby advised and notified to provide suitable headgates, control works, measuring devices, and gauges; failing in which, action will be taken by this department pursuant to the terms of the above section of the law.

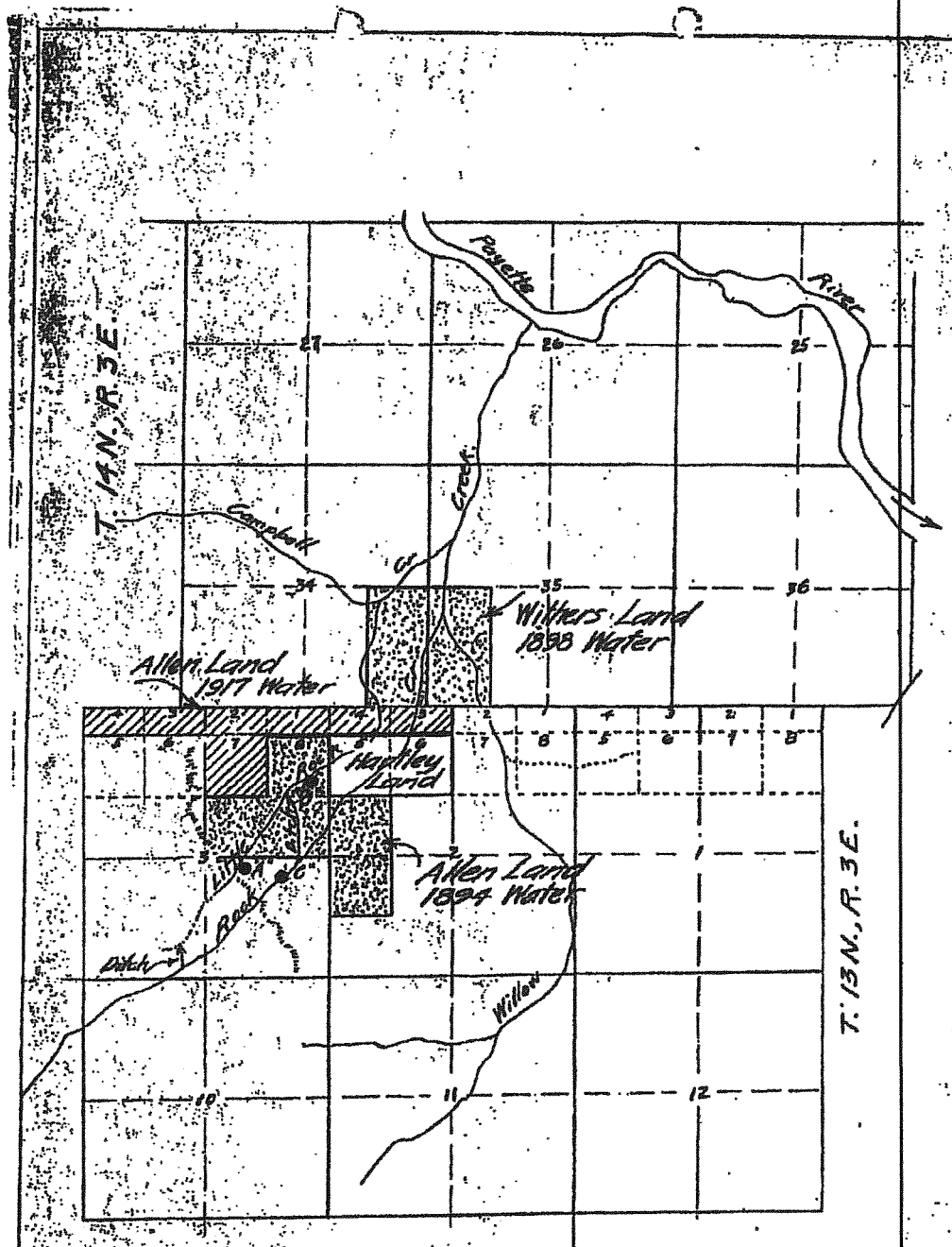
Dated, this 25th day of May, 1931

John L. ...
Commissioner of Reclamation

To: D. K. ALLEN
cc: W. N. WITHERS

EXHIBIT 2

7-15-52



ALLEN vs WITHERS DECREE
 Rock Creek & Little Rock Creek
 Valley County Idaho

7-15-32

EXHIBIT 3

AFFIDAVIT OF BILL LESLIE

STATE OF IDAHO)
County of Ada) ss.

BILL LESLIE, being first duly sworn upon oath, deposes and states:

1. My name is Bill Leslie. I live at 2404 N. 21st Street, Boise, Idaho 83702. I am over the age of 18 and make the following statement based on my own personal knowledge.
2. My family has a ranch in Cascade, Idaho which is adjacent to the Allen Ranch. I grew up working on our family ranch and still work on it.
3. From about 1949 to 1955, when I entered the U.S. Army, I often worked for D.K. Allen, who is J.R. Allen's grandfather. Mr. Allen had me working on haying his ranch and working on irrigation of the ranch.
4. One of the diversions I personally worked on was Mr. Allen's diversion from Rock Creek. He had a ditch which moved water from Rock Creek to Little Rock Creek so he could irrigate his home place, which is the northern part of the Allen Ranch.
5. In those days, we got to the Rock Creek diversion on ~~horseback~~ ^{*with*} because there was ^{*The one time I was there we*} no road to it. But I know for a fact that the diversion and ditch were there during the years I worked on Mr. Allen's ranch because I helped maintain it for Mr. Allen. ^{*walked*}
6. The irrigation diversion for Rock Creek is marked on the map attached to this affidavit.

FURTHER YOUR AFFIANT SAYETH NAUGHT

Dated this 9th Sept. 10⁵² day of ~~August~~, 2013.

William J. Leslie
Bill Leslie

STATE OF IDAHO)
County of Ada) ss.

SUBSCRIBED AND SWORN before me this 9th day of September, 2013.



[Signature]
Notary Public
Residing at Boise, ID
My commission expires 8-8-18

EXHIBIT 4



AFFIDAVIT OF JOHN KWADER

STATE OF IDAHO)
) ss.
County of Valley)

JOHN KWADER, being first duly sworn upon oath, deposes and states:

1. My name is John Kwader and I live at 34 Ilka Lane, McCall Idaho 83638. I am retired from Boise Cascade Corporation. I am over the age of eighteen and make the following statement based on my own personal knowledge.

2. In the late 1970's and through the 1980's I was the Land Manager for Boise Cascade Corporation for the company lands in the Cascade Idaho area. This area included the area of West Mountain in Cascade which is near the Allen Ranch.

3. In the years I was Land Manager, I knew Mr. Pat Allen who is Mr. JR Allen's father.

4. Mr. Pat Allen had a diversion on Rock Creek located on Boise Cascade lands. This diversion, which included a ditch, was located at the place JR Allen calls the Upper Diversion. This diversion and ditch operated to allow the Allens to take Rock Creek water and put it into Little Rock Creek to deliver to the home ranch. The Allens and Boise Cascade had a very good relationship. Boise Cascade in those days did not always have written agreements with neighboring landowners such as the Allens. However, the Company and I knew the Allens had a longstanding irrigation and livestock diversion on the Boise Cascade lands and that the diversion probably had predated Boise Cascade's acquisition of the lands. Neither I nor the company had any concerns or problems with how Mr. Allen operated the upper diversion, and the company always honored Mr. Allen's right to access the diversion.

5. When the company was ready to start logging activities on the lands, I met with Mr. Pat Allen to discuss the operations and make sure that his irrigation ditches were

EXHIBIT 5

JPK
John P Kwader

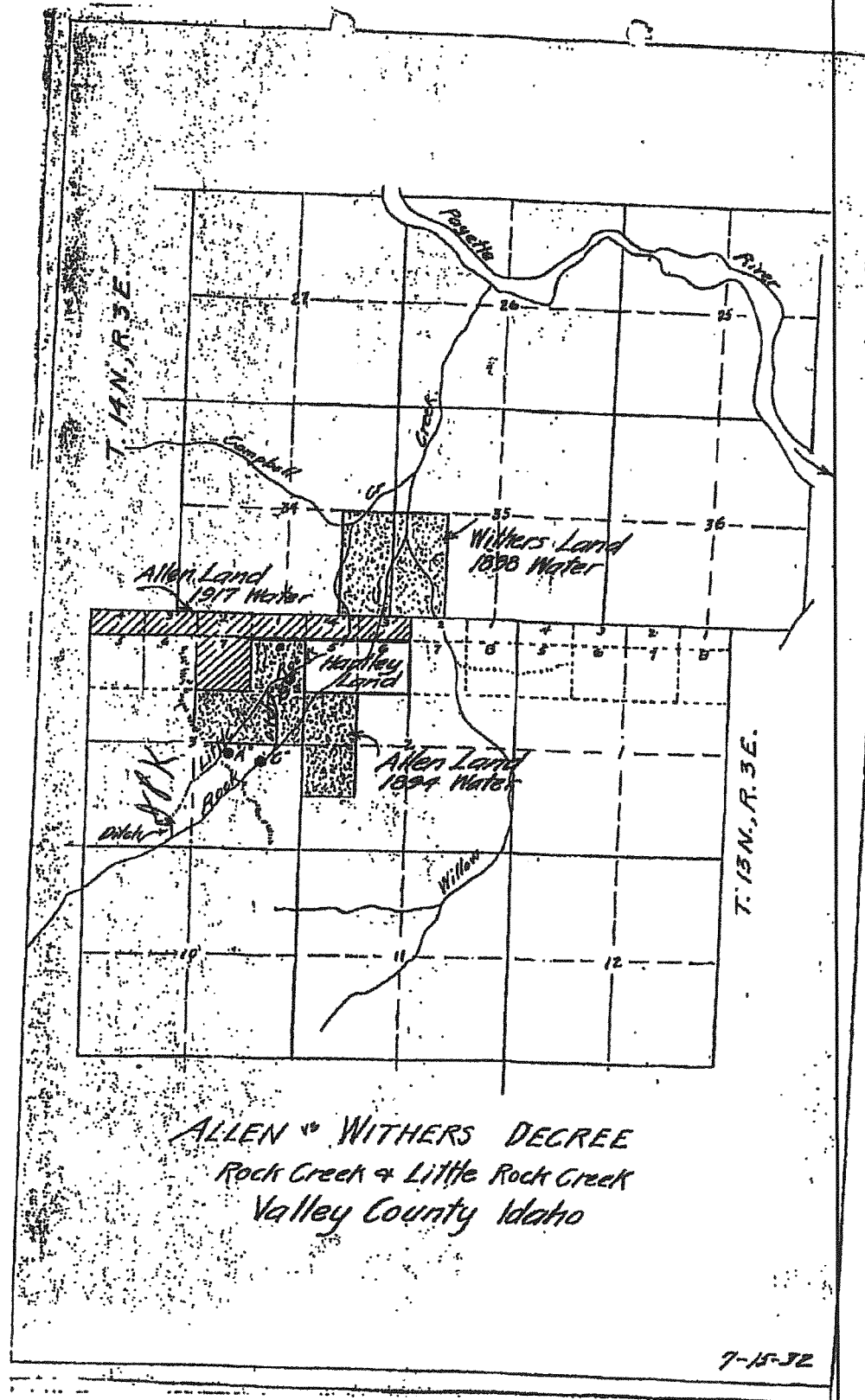


EXHIBIT 1

AFFIDAVIT OF DR. DAVID R. TUTHILL, JR.

STATE OF IDAHO)
County of Ada) ss.

Dr. David R. Tuthill, Jr., being first duly sworn upon oath, deposes and states:

Background & Qualifications

- 1) I am the founder and owner of Idaho Water Engineering, LLC, an Idaho Limited Liability Company ("Idaho Water Engineering"). Idaho Water Engineering provides professional engineering services related to water rights, water delivery and stream channel protection.
- 2) I have been engaged in the area of Idaho water rights since 1976. I am the author of more than a dozen publications regarding water rights, water right transfers, and water resource development, including most recently a chapter on "*Tackling 21st Century Challenges in Water Rights Management*" in a book entitled "Navigating Government Water Rights Issues" (Published by Thomas Reuters/Aspatore, 2009), a paper entitled "*Role of Hydroinformatics in Development of 21st Century Water Resources Policy*," in the Proceedings of the 8th International Conference on Hydroinformatics, Concepcion, Chile, 2009, and a paper entitled "*Conjunctive Management in Idaho*," published in "The Water Report," Issue 108, February 15, 2013, pp. 1-11.
- 3) My education includes a Bachelor of Science degree in Agricultural Engineering from Colorado State University (1974), a Master of Science degree in Civil and Environmental Engineering from the University of Colorado (1975), and a Doctorate of Philosophy degree in Civil Engineering from the University of Idaho (2002). I have been licensed as a Professional Engineer in Idaho since 1979.

Dr. Tuthill's Positions Within the IDWR

4) I am the former Director of the Idaho Department of Water Resources (IDWR). I worked at the IDWR for more than 33 years, and retired from the agency on June 30, 2009. The positions in which I served were as follows:

- (a) **Director**, January 2007 – June 2009.
- (b) **Administrator, Water Management Division**, May 2005 – December 2006.
- (c) **Adjudication Bureau Chief**, July 1997 – April 2005.
- (d) **Western Regional Office Manager**, July 1985 – June 1997.
- (e) **Water Allocation Section Supervisor**, December 1978 – June 1985.
- (f) **Payette Adjudication Supervisor**, September 1976 – November 1978.
- (g) **Adjudication Supervisor**, January 1976 – August 1976.

5) These positions all included responsibilities related to water rights, some with more direct involvement than others.

6) Of particular note was my assignment as Payette Adjudication Supervisor. In this capacity I supervised Idaho Department of Water Resources activities in the recommendation of water rights for adjudication.

Scope of Engagement

7) As related to the present proceedings, I have been engaged by Mr. J.R. Allen concerning water right No. 65-03111X. I have been asked to explain how the upper point of diversion, located in T13N, R3E, NWSW Section 3, for this water right might have been overlooked in the Payette River Basin Adjudication and subsequently in the Snake River Basin Adjudication.

Process for Investigating and Recommending Water Rights in the Payette River Basin

Adjudication and the Snake River Basin Adjudication

8) The Payette River Basin Adjudication was commenced in the early 1970s. At that time the Idaho Department of Water Resources (and its predecessor agency, the Idaho Department of Water Administration) provided an administrative role in the water right adjudication process. Department staff conducted the following process:

- a) Initiate the water right adjudication process via commencement by the Idaho Legislature or the District Court.
- b) Conduct a hydrographic survey of the basin:
 1. Obtain aerial photographs of the basin at a scale of eight inches to the mile.
 2. Take the aerial photographs into the field and annotate streams, ditches, diversions and fields directly on the aerial photographs.
 3. Draw maps of the basin at a scale of eight inches to the mile on vellum, a translucent product. Take care to annotate all known hydrography on the vellum. Use United States Geologic Survey quadrangle maps as references where they are available.
 4. Make blueline prints of the vellum maps using an ammonia process, similar to the preparation of construction blueprints.
- c) Take a set of blueline prints into the Office of the County Assessor and annotate on the prints the owners of potentially irrigated property.
- d) Convey property ownership information to the vellum originals.

- e) Review Department water right files and depict water rights on the vellum maps.
 - f) Develop a list of property owners in the basin who might have water rights, using information from the maps and information in the files of the Department.
 - g) Work with the District Court to legally join potential water users to the adjudication, providing an opportunity to come into Department offices or field workshops to view the maps and file claims to water rights in the adjudication. Review the claims and make recommendations to the District Court regarding the suggested disposition of each claim.
- 9) The District Court ultimately decreed the water rights in the Payette River Basin Adjudication. The Snake River Basin Adjudication normally used the results of the Payette River Basin Adjudication for its determinations.

**Potential to Inadvertently Miss an Existing Point of Diversion in the
Water Rights Adjudication Process**

10) Department staff conscientiously attempted to create thorough maps, but sometimes points of diversion were inadvertently omitted from maps. In the case of Water Right No. 65-3111X, the upper diversion appears to be located in a forested area and the hydrographic surveyor might have missed seeing it. Also, Mr. Pat Allen, the owner of the water right during the Payette River Basin Adjudication, was responsible for many water rights and could have overlooked claiming this diversion if not reminded of it by the map. Misunderstandings over the location of a diversion described by a legal description is not an unheard-of problem in some of the older adjudication proceedings.

The maps sometimes did not coincide with the legal description. In the IDWR file is a map dated July 15, 1932. This map was included in the *Allen v. Withers* decree and clearly depicts an upper diversion. Please see Exhibit 1. This map, for a number of reasons, might not have been available to the hydrographer who updated the mylar maps. I have reviewed copies made from either the original mylar maps or from blue-line maps copied from the mylar maps, and the upper diversion does not appear to be depicted on these copies. Please see attached Exhibits 2 and 3. I am familiar enough with the process used in the Payette Adjudication that I recognize Exhibits 2 and 3 as documents from the Payette Adjudication review process and recognize the handwriting on the maps. My belief is that the upper diversion was overlooked in the initial hydrographic survey because the diversion is clearly shown on the *Allen vs. Withers* map. The maps, Exhibits 2 and 3, from the IDWR files do not explain the omission of the point of diversion depicted on the *Allen vs. Withers* decree map. However the absence of the diversion on the maps does not mean the diversion did not exist notwithstanding being missed during the review process.

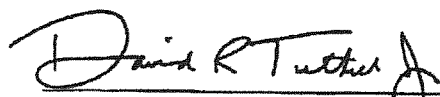
11) In addition to the *Allen vs. Withers* decree maps I referred to above as Exhibit 1, I have interviewed Mr. J.R. Allen (son of Mr. Pat Allen who filed the claims in the Payette River Basin Adjudication), who provided very specific details of the history of the diversion which he refers to as the Allen Upper diversion. His specific knowledge, coupled with the *Allen vs. Withers* map, clearly confirms in my mind there was a diversion consisting of a ditch which connected Rock Creek to Little Rock Creek. Based on the map, the ditch would have allowed water in Rock Creek to be diverted into Little Rock Creek, which is how Mr. Allen has explained the diversion operated for many years

including today. According to my discussion with Mr. Allen, he confirms the diversion has been used for decades and has continued to the present even if it was mistakenly overlooked in the Payette River Basin Adjudication and the Snake River Basin Adjudication.

12) In my opinion, Exhibit 1 clearly establishes the point of diversion which Mr. Allen references as his upper point of diversion as existing in 1932. Unfortunately, there are no clear records or information as to why this point of diversion was left off the maps and not included in the Payette Adjudication. However, it is my opinion that this is simply an error that can and should be rectified without worrying at this point about whether someone was at fault. It is simply an error that should be acknowledged and corrected.

FURTHER YOUR AFFIANT SAYETH NAUGHT

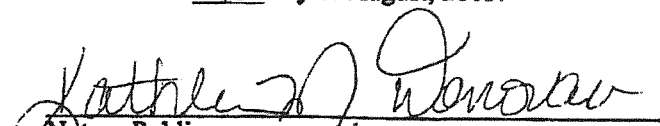
Dated this 26th day of August, 2013.

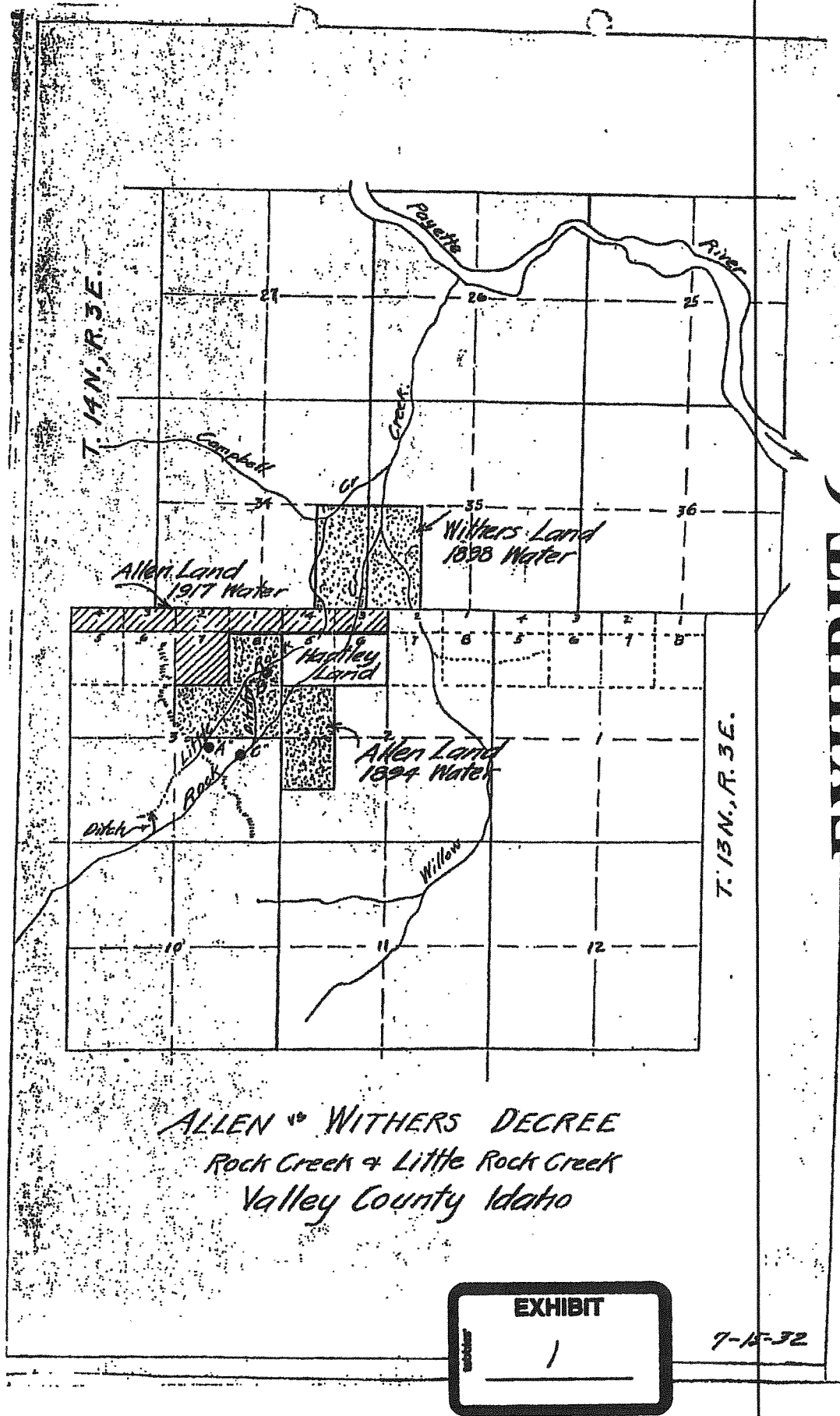

David R. Tuthill, Jr., Ph.D., P.E.

STATE OF IDAHO)
County of Ada) ss.

SUBSCRIBED AND SWORN before me this 26th day of August, 2013.




Notary Public
Residing at Boise, ID
My commission expires 8-8-2018



PRBA MAP "A" T13N R3E



CLAIM 65-03111 X REF R66
T. 13. N. 3. R. 3. E.
S. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.
SCALE 1" = 1 MILE
PHOTO TO MAP A DATE 11-54

EXHIBIT 6

EXHIBIT

2

PRBA MAP A
T13N R3E

65-310

7

13

N 2nd SUB

ALLEN 1st SUB

WEST GRAYTON
MTN. BARNARD
SUB. ALLEN
SUB. 1

LOT 5

65-371

ALLEN 3rd SUB

GOV. LOT 1

ALLEN 4th SUB.

65-9498
65-3441

65-2731

65-2734

65-287

65-2546

EXHIBIT
3

Deeth & Richardson
Producers

None

EXHIBIT 6

Exhibit 3

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

OCT - 2 2013

By _____

Clerk

Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

) Subcase No. 65-03111X

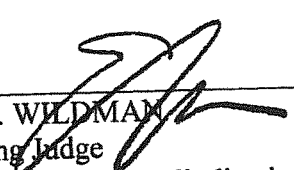
) NOTICE SETTING HEARING ON
) RULE 60(b) MOTION FOR RELIEF
) FROM JUDGMENT
)
)
)

NOTICE IS HEREBY GIVEN that a hearing in the above-captioned matter is set for **Tuesday, January 21, 2014, at 1:30 p.m. (Mountain Time)** at the Snake River Basin Adjudication Courthouse, 253 – 3rd Avenue North, Twin Falls, Idaho. Parties may also participate by telephone by dialing the number 1-215-446-0193 and when prompted entering the code 406128, followed by the # sign. Should you experience difficulty connecting to the conference call or experience a disconnect during the proceedings, please hang up and call the court clerk at 208-736-3011, for further instructions.

NOTE: It is customary for multiple hearings to be scheduled for this time slot. You will need to call in promptly at 1:30 p.m. (Mountain Time). Momentarily, the court clerk will come on the line and provide further instruction. In an effort to proceed as quickly as possible and minimize any confusion, please wait to identify yourself until Judge Wildman calls your water right number. At that time, he will inquire as to who is participating in that particular hearing. Once your hearing is completed, you are free to hang up your phone. The courtroom is equipped with a very sensitive sound system and can pick up any whispering, paper shuffling and background noise. As you are waiting for your hearing, we request you remain as quiet as possible in order for the court reporter to accurately record the proceedings. When at all possible, please avoid calling

in using a cell phone and the use of the "speaker" feature on your handset phone is prohibited, as these two uses can result in interference with the sound system.

DATED: October 2, 2013.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the NOTICE SETTING HEARING ON RULE 60(B) MOTION FOR RELIEF FROM JUDGMENT was mailed on October 02, 2013, with sufficient first-class postage to the following:

E K ALLEN RANCHES INC
Represented by:
BRUCE M. SMITH
950 W BANNOCK ST STE 520
BOISE, ID 83702-6118
Phone: 208-331-1800

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

A handwritten signature in cursive script, appearing to read "Julie Murphy", is written over a horizontal line. The signature is fluid and stylized.