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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) MOTION FOR STAY OF
NO. 65-23493 IN THE NAME OF ALLEN) ADMINISTRATIVE PROCEEDING
RANCH, LLP)
)
)
_____)

COMES NOW Protestant West Mountain Water Association, Inc. (hereinafter "WMWA"), by and through its counsel of record Honsinger Law, PLLC, and, pursuant to Rule 565 of the Department's Rules of Procedure, hereby moves for an order staying the proceedings in this administrative matter until the proceedings involving a determination of the elements of water right no. 65-3111X currently underway in the Snake River Basin Adjudication District Court are concluded. Rule 565 provides that "[t]he presiding officer may consider and decide prehearing motions with or without oral argument or hearing." IDAPA 37.01.01.565.

The basis for WMWA's Motion to Stay Administrative Proceeding is that there is a concurrent proceeding in the Snake River Basin Adjudication Court seeking to add to Water Right 3111X the same point of diversion Allen Ranch, LLP seeks to add to water right no. 65-3111X through Transfer No. 78252.

This Motion is supported by the Affidavit of Charles L. Honsinger lodged concurrently

herewith, by the record in this proceeding, and by the argument hereinbelow.

FACTS

Water right No. 65-3111X was decreed in the Snake River Basin Adjudication to E K Allen Rances, Inc. with a single point of diversion in T13N R03E Section 3, NWSE on October 31, 2000. *See* Affidavit of Charles L. Honsinger, Ex. 1. On May 29, 2012, Allen Ranch filed Transfer application No. 78252 seeking to, among other things, add an “upper” point of diversion on Rock Creek to water right no. 65-3111X. *See* Transfer Application No. 78252. On October 2, 2013, Allen Ranch filed its Rule 60(b) Motion for Relief From Judgment with the SRBA District Court, together with supporting Memorandum and Affidavits. *See* Affidavit of Charles L. Honsinger, Exs. 1, 2. The Motion, Memorandum, and Affidavits clearly establish that Allen Ranch is seeking through the Rule 60(b) Motion exactly the same relief it is seeking through Transfer No. 78252: the addition of the same point of diversion (the “upper diversion”) to water right no. 3111X. *See* Affidavit of Charles L. Honsinger, Ex. 2. The hearing in the SRBA District Court on Allen Ranch’s Rule 60(b) Motion for Relief from Judgment is scheduled for January 21, 2014. *See* Affidavit of Charles L. Honsinger, Ex. 3.

ARGUMENT

The elements of the water right for which this transfer is sought have been decreed in the SRBA according to Allen Ranch’s transfer application, and according to the decrees themselves. Now, Allen Ranch is seeking to change one of those elements through the SRBA. Thus, it is entirely possible that the elements of water right no. 65-3111X that is the subject of this transfer will be changed by the SRBA District Court either before or after any decision is made by the Idaho Department of Water Resources on exactly the same issue. 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.

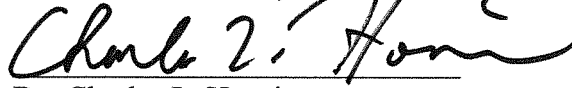
Concurrent judicial and administrative proceedings are wasteful of administrative, judicial and party resources. It is unfair to ask either the parties in the administrative case, or IDWR to participate in proceedings in which the issue to be decided is also to be decided in the SRBA District Court. It is obviously Allen Ranch's intent to change through the SRBA the point of diversion that has already been decreed by the SRBA District Court. The most logical and proper course of action is to allow Allen Ranch to proceed through the SRBA and determine if the point of diversion it seeks can be added through that process. Then the proceedings in this case before IDWR may or may not be necessary. Allen Ranch simply can't have it both ways by forum shopping and attempting to participate in separate administrative and judicial proceedings on exactly the same issue in an effort to find one or the other that will issue a decision with which it agrees.

Allen Ranch has chosen the SRBA as the path it wishes to take (and in fact, that path is probably accurate given the representations made by Allen Ranch regarding the elements of its decreed water rights in this administrative proceeding). IDWR should honor that choice, and stay these proceedings until the SRBA proceedings are complete. Then, these proceedings may or may not be necessary, depending upon the outcome of the hearing in the SRBA District Court. Regardless, both IDWR and the parties will protect their resources from participation in an unnecessary concurrent proceeding.

West Mountain Water Association, Inc. respectfully requests that the hearing officer grant its Motion for Stay of Administrative Proceeding.

Dated this 8th day of October, 2013

HONSINGER LAW, PLLC



By: Charles L. Honsinger

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October, 2013, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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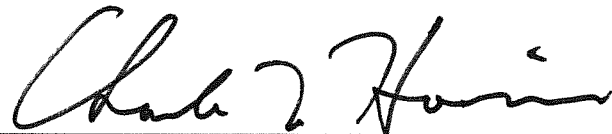
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