Staff Memorandum
Allen, West Mtn. Water Assoc., Ford Applications

Transfers: **77121 (65-3111X) Allen**
77209 (65-3111A) West Mtn Assoc.

Applications for Permit: 65-23451 Allen
65-23457 Ford

From: J. Westra JFW
Date: 04/01/12

Background
The above applications are a result of a complaint being filed 11/1/10 by Chess. The complaint alleged that Allen Ranch was diverting water at an unauthorized point of diversion. The Department records from the PRBA and SRBA processes show the P/D for water rights #65-3111X, #65-3111A, and #65-3111F are NWSE, Section13, TN13N, R03E. The Allen and West Mtn Assoc. transfer applications address the P/D corrections. As water right #65-3111X does not include stockwater use, the Allen Ranch requests a new appropriation of water for the shoulder irrigation season and year-round stockwater. A new allocation for a creek water feature is proposed by the Ford application.

Historical
Prior wateruser issues on the creek ended up in court with a decree being issued in 1930. See decree attachment **"A."** The decree discusses diversions to "Little Rock Creek" which may be associated with the Upper Allen Diversion during that time period.

Creek Water Rights
The creek of issue has several names: Rock Creek, Richards Creek, and unnamed stream as in the case of senior water rights 65-3111X, 65-3111A, and 65-3111F. The 3 senior rights equal the majority of the diverted flow **3.15 cfs** while the remainder of the junior rights equal **.18 cfs** for year round domestic uses.
A list of water rights is attached as **"B"**

Field Visits/Confirmations
-11/18/10 a field investigation was completed by regional staff. GPS positions were taken on the Allen points of diversion along with photos. See field report and map **"C"**

-10/31/11 a field check was made by regional staff. A creek flow measurement of **.47 cfs** was obtained at the West Mountain Road culvert. A flow of **.38 cfs** was measured on the Allen ditch culvert west of pasture gate also approximated at the West Mountain Road culvert . See field report **"D."**

-11/18/11 a field check was made by regional staff with water depths measured at the culverts in the previous visit. Flow approximations: creek =**.90 cfs** and Allen ditch =**.50 cfs.** See field report **"E."**

-12/21/11 a final field check was made by regional staff . Flow approximations: creek= **1.0 cfs** and Allen ditch= **.4 cfs**. See field report **"F."**

Creek Management

-There are no minimum stream flows applicable to this creek

-The Idaho Department of Fish & Game does not consider this creek a fishery. Confirmed on 11/03/11 with Dale Allen, McCall Office.

-It is certainly acknowledged the creek measurements are limited/marginal; however, a call for water by the senior water right holders could potentially eliminate all the creek flow in certain locations depending on the diversion locations and time of season.

-The small diversion rate (.05 cfs) for the West Mtn. Assoc. transfer just downstream of the upper Allen diversion would require additional carry- water for delivery in the creek. The same applies for the proposed Allen stock water diversion (.14 cfs) conveyed down the Allen Ditch during the non- irrigation season.

-Regardless of the approval/denial of the applications, measurement and lockable control works should be required for all the creek water rights-- Payette River Watermaster regulation.

-New consumptive appropriations are subject to the 6/15 basin # 65 curtailment condition #185

Attachments

" 1930
Decree 65C "

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

MARY R. ALLEN and D. K. ALLEN,

Plaintiffs,

-vs-

W. N. WITHERS and MAUD WITHERS,

Defendants.

D E C R E E

Case No. 484 Inst. No. 12
DISTRICT COURT VALLEY COUNTY IDAHO
Filed: Oct 13 1930 at M.
FOREST E. ROBB - Clerk
By Bernice A. Kerby - Deputy.

This cause came on regularly for trial before the court without a jury in the district courtroom at Cascade, Idaho, on the 18th day of July, 1930; F. M. Kerby and Wm. M. Morgan, appeared for the plaintiffs, and Fred M. Taylor and Rhodes & Estabrook appeared for the defendants; witnesses were called, sworn and examined on behalf of the respective parties, the evidence was closed and both parties rested; the matter was submitted for decision and the court, being fully advised in the premises, made findings of fact and conclusions of law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

65 3111
~~6510111~~

1.

That the plaintiffs, Mary R. Allen and D. K. Allen, be, and they hereby are, decreed, awarded and allotted 160 miner's inches, continuous flow, of the waters of Rock Creek and its tributaries, which stream is tributary to Willow Creek, which flows into the North Fork of the Payette River, west of Cascade, Idaho, and they are the owners of the right to divert said amount of water from said stream for the irrigation of and domestic use upon their land described as follows:

The SW¼ of the NW¼, and the NW¼ of the SW¼ of Section 2;

A

1/26/12 d'less

and Lot 8, and the SW¼ of the NE¼, and the SE¼ of the NE¼ of Section 3, all in Township 13 N. R. 3 E., B.M. in Valley County, Idaho, containing 200 acres more or less,

with date of priority of June 1, 1894;

65 3112

~~6520112~~

II.

That the plaintiffs, Mary R. Allen and D. K. Allen, be, and they hereby are, decreed, awarded and allotted 100 miner's inches, continuous flow, of the waters of Rock Creek and Little Rock Creek and their tributaries, which streams are tributaries to Willow Creek, which flows into the North Fork of the Payette River, west of Cascade, Idaho, and that they are the owners of the right to divert said amount of water from said streams for the irrigation of and domestic use upon their land described as follows:

Disallowed
Recd as
65-3111X

Lots 3 and 4 in Section 2, and Lots 1, 2, 3, 4 and 7 in Section 3, all in Township 13 North, Range 3 East, B.M., in Valley County, Idaho, containing 149 acres, more or less,

with date of priority of July 4, 1917;

65 3113

~~6520113~~

III.

That the defendants, W. N. Withers and Maud Withers, be, and they hereby are, decreed, awarded and allotted 80 miner's inches, continuous flow, of the waters of Rock Creek and its tributaries and 30 miner's inches, continuous flow, of the waters of Little Rock Creek and its tributaries, which streams are tributaries to Willow Creek, which flows into the North Fork of the Payette River, west of Cascade, Idaho, and that they are the owners of the right to divert said amounts of water from said streams for the irrigation of and domestic use upon their land described as follows:

Forfeited

The east half of the Southeast Quarter of Section 34, and the West Half of the Southwest Quarter of Section 35, all in Township 14 North, Range 3 East, Boise Meridian, containing 160 acres,

with date of priority of June 1, 1898;

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.

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 divices 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;

VII.

That plaintiffs have, and they hereby are awarded, judgment against the defendant, W. N. Withers, for their costs and disbursements herein necessarily expended hereby taxed at $ 162.35 .

Dated this 10th day of October, 1930.

A. C. Sutton
District Judge.

Recorded Judgment Record 2 Page 161.

Compared x
Indexed-Direct x
Indexed-Indirect x

STATE OF IDAHO,)
County of Valley.) ss.

I, Forest E. Robb Ex-officio Auditor & Recorder in and for Valley County, Idaho, DO HEREBY CERTIFY AND DECLARE that I have compared the foregoing "Decree" with the record of such Instrument in my office, which instrument is (Filed and indexed) (Recorded) in Book 2 of Judgments, at page 161, and that the foregoing is a true and correct copy of such record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 18th day of May, 1931.

FOREST E. ROBB
Ex-Officio Auditor and Recorder,
Valley County, Idaho.
By: Deputy

(2)

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)

DECREE

Author is Iowa report

FINDINGS and CONCLUSIONS of 1931

of

COMMISSIONER of RECLAMATION

Re: DISTRIBUTION AND USE OF WATER

Dept. findings

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;

SCANNED 7-15-32
JUN 26 2012

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 100 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: 30 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;

7-15-32

"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)

6. 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.

SCANNED
7-15-32
JUN 26 2002

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."

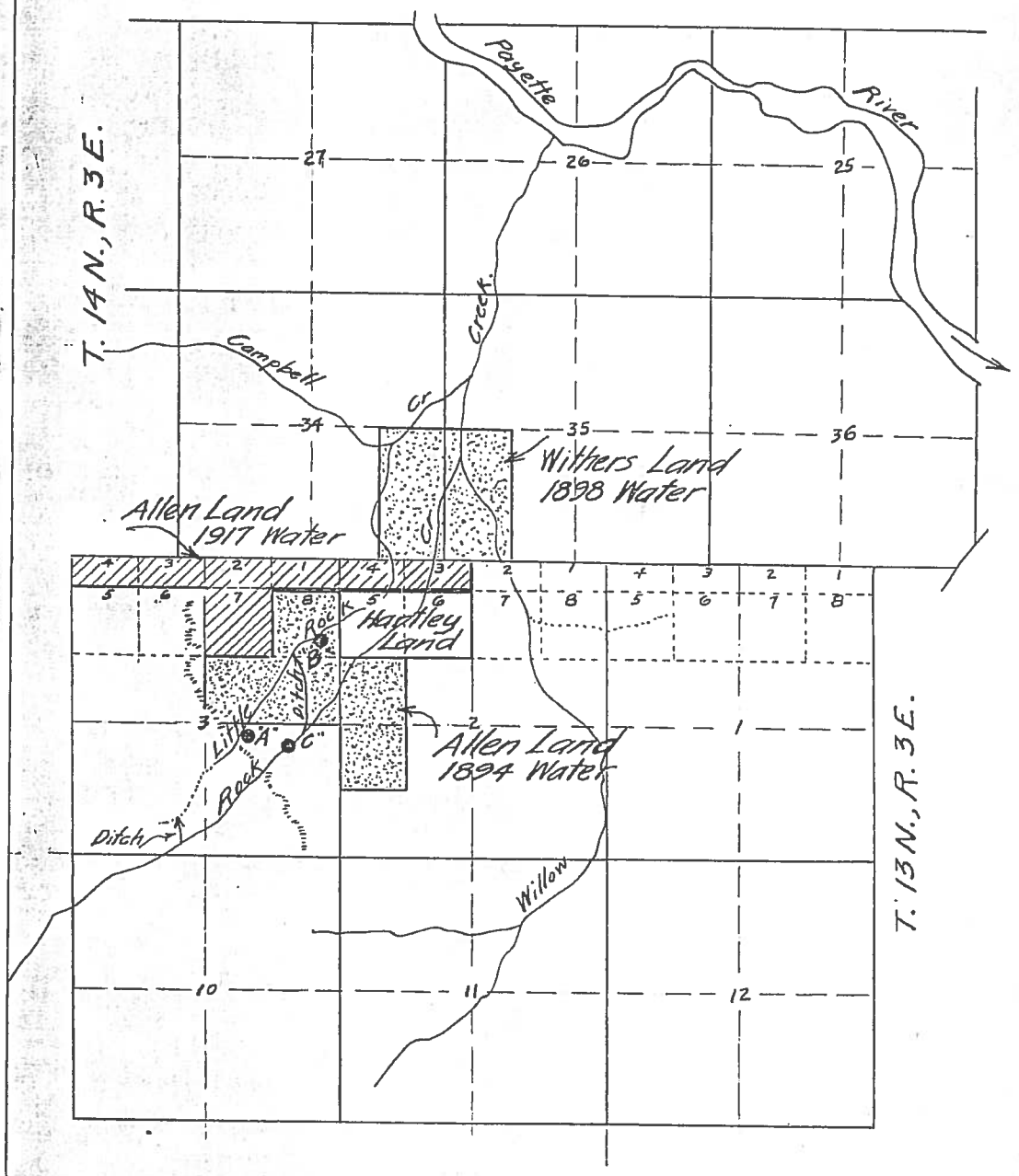
Under and pursuant to the terms and conditions of the decree and of Section 5617, Idaho Compiled Statutes, as amended by Chapter 19 (Senate Bill No. 21), Session Laws of 1927, all parties-in-interest are hereby advised and notified to provide suitable headgates, control works, measuring devices, and gages; 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

Commissioner of Reclamation

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

7-15-32



ALLEN vs WITHERS DECREE

Rock Creek & Little Rock Creek

Valley County Idaho

7-15-32

REPORT ON DECREE, OCTOBER 10, 1932, ALLEN - WITHERS, ROCK CREEK AND TRIBUTARIES, VALLEY COUNTY, IDAHO

1932

The controversy in this case divides itself into three parts:

1. Use by Allen of 1894 decree, Rock Creek water upon lands other than those described in the decree for this particular right, viz., land which was awarded a later right, thereby depriving Withers of waste and return flow;

2. Diversion of LITTLE ROCK CREEK water awarded to Withers by a third party who claims a prior right thereto, although he was not made a party to the adjudication and has no record right;

3. A determination of the amount of natural flow of LITTLE ROCK CREEK, which is supplemented by Allen's diversions from ROCK CREEK to LITTLE ROCK CREEK, and using that channel as a carrier until its ditches are reached.

PART 1.

The decree awards Allen 160 inches from Rock Creek and tributaries; date of priority - June 1, 1894, for the irrigation of, and domestic use upon:

SW¼ NE¼, NW¼ SE¼, Section 2; Lot 2, SW¼ NE¼, SE¼ NE¼, Sec. 3, Township 13 North, Range 3 East of Boise Meridian.

Allen was, also, awarded a subsequent right from BIG & LITTLE ROCK CREEKS - 100 inches, date of priority - July 4, 1917, for the irrigation of, and domestic use upon:

Lots 3 & 4, Sec. 2; Lots 1, 2, 3, 4 & 7, Sec. 3, Township 13 North, Range 3 East of Boise Meridian

Reference to the attached map will disclose the relative locations of these tracts of land. By reason of the topography, when Allen uses his 1894 water upon the land described therefor, Withers receives benefit in the way of waste, and return flow which finds its way into ROCK and LITTLE ROCK CREEK channels above Withers' headgates. Inasmuch as there is but seldom enough water in the two streams to fill Allen's 1917 right, he diverts a part of his 1894 water from BIG ROCK CREEK to LITTLE ROCK CREEK and carries it down that channel to various ditches which lead to the 1917 lands. The waste and return flow from BIG ROCK CREEK water, thus applied to:

Lots 1, 2, 3, 4 & 7, Section 3

does not become available for Withers' diversion and use, but flows off to the north into another depression or creek channel.

BIG ROCK CREEK water applied to:

Lots 3 or 4, Section 2

does not damage Withers materially, if at all.

On July 14, Allen was diverting 1894 water to 1917 lands and maintains he has a right to do so, and frankly states that he expects to continue this practice.

Thus it appears the issue is clear on this point, and a citation to Allen for violation of the decree is Withers' remedy.

PART 2.

Withers' point of diversion for his [illegible] water (20 inches, priority June 1, 1903), while not described in the decree, is apparently on his own land, near the:

SW Corner of $SW\frac{1}{4}$ $SE\frac{1}{4}$, Section 34, T. 14 N., Range 3 East, B. M.

He so states and has a diversion box at that point. One Lesley Hartley, owner by contract of sale of:

$N\frac{1}{2}$ $NW\frac{1}{4}$, Section 2, Township 13 North, Range 3 East of Boise M.

is maintaining a diversion dam on his west line, where LITTLE ROCK CREEK enters the property, and diverts to his land all the LITTLE ROCK CREEK water, which reaches this point. It is my information he persisted in this practice during 1931, and has to date in 1932. On July 14, the dam was in place and a quantity of water, estimated at 12 to 15 miner's inches, was being spread onto the meadow. Allen was taking 25 inches of water from this same point, running it north along the road until it reached:

Lot 4, Section 2

where it was being used. These two diversions were made up of 5 inches of LITTLE ROCK CREEK water and 35 inches of BIG ROCK CREEK, first diverted to LITTLE ROCK CREEK channel.

If not diverted at this point, LITTLE ROCK CREEK water would continue on down the country, across the Hartley and Allen land, toward Withers' headgate and, according to him, would be of material benefit. It hardly appears probable that 5 inches would reach him now but, no doubt, the flow earlier in the season is larger and likely has greater value than at the present time.

Neither Hartley nor Thomas Worthington, prior owners of:

N½ NW¼, Section 2,

were parties to the suit between Allen and Withers, so, naturally, there is no right decreed for this land, if it is entitled to one. Worthington claims a right to LITTLE ROCK CREEK water for this land, with date of first use of 1933, and is ready to defend such a claim. It should have been adjudicated at the time of the Allen -vs- Withers case. Now, the matter must, apparently, become the subject of another suit. I suggest that an orderly way to initiate this would be for the Department of Reclamation to serve notice upon Hartley and Worthington that within a short reasonable period of time his dam will be cut, and the water turned down LITTLE ROCK CREEK for Withers. That would give them an opportunity to ask for a restraining order, preventing interference with their diversion dam and, I assume, put the matter properly before the court for adjudication so it would be settled before the 1938 irrigation season.

PART 3.

As shown on the accompanying map, Allen diverts BIG ROCK CREEK water to LITTLE ROCK CREEK through 2 ditches. The upper one spills into LITTLE ROCK CREEK very near its head. Thus a considerable part of the channel has its natural condition disturbed and without a comparatively large number of measurements of small quantities of water, it is difficult to determine the natural flow. To eliminate as many of these uncertainties as possible, both of the BIG ROCK diversions to LITTLE ROCK CREEK were shut off about 4:00 P.M., July 14. At 10:00

A.M., July 15, LITTLE ROCK CREEK was measured, first at point "A" and found to be 6 miner's inches. It was again measured at point "B" and found to be 5 miner's inches. This last measurement is just a short distance above the point where Hartley takes the water.

At the same time, BIG ROCK CREEK was measured with no diversions above, at point "C" and found to be 77 miner's inches. All measurements were made over Cippoletti weir crests.

Rock Ck
77"
(1.54 cfs)
July measurement

Five miner's inches then was the total flow of LITTLE ROCK CREEK on July 15, immediately above the Hartley land. There had been a hard rain on the 13th and 14th, which I am satisfied had served to temporarily increase the flow of all streams in that vicinity.

Allen had been diverting 35 inches into LITTLE ROCK CREEK at his upper ditch and 15 at the lower, diverting 15 inches from BIG ROCK CREEK for direct irrigation and was leaving 10 or 12 inches in the creek, and it was going down to Withers. On July 14th, Withers was getting 30 inches from ROCK CREEK and 10 or 12 inches from LITTLE ROCK CREEK, or a total of 40 inches. He states that up to about 3 weeks ago, he had all the water he wanted, but thinks he would now be getting more if Hartley had not taken any LITTLE ROCK CREEK water this year.

To expedite a determination of the natural flow of LITTLE ROCK CREEK at any time, Allen should install weirs where each of his ditches discharge into the stream and at all points where he is diverting therefrom. There are 4 of these. He has made some attempt to put

in weirs but they have filled up with sand and have been torn out until now there are insufficient facilities to determine the natural flow without taking some time. I believe he will do this readily once other matters in controversy are settled, or if a watermaster should be appointed to administer the decree.

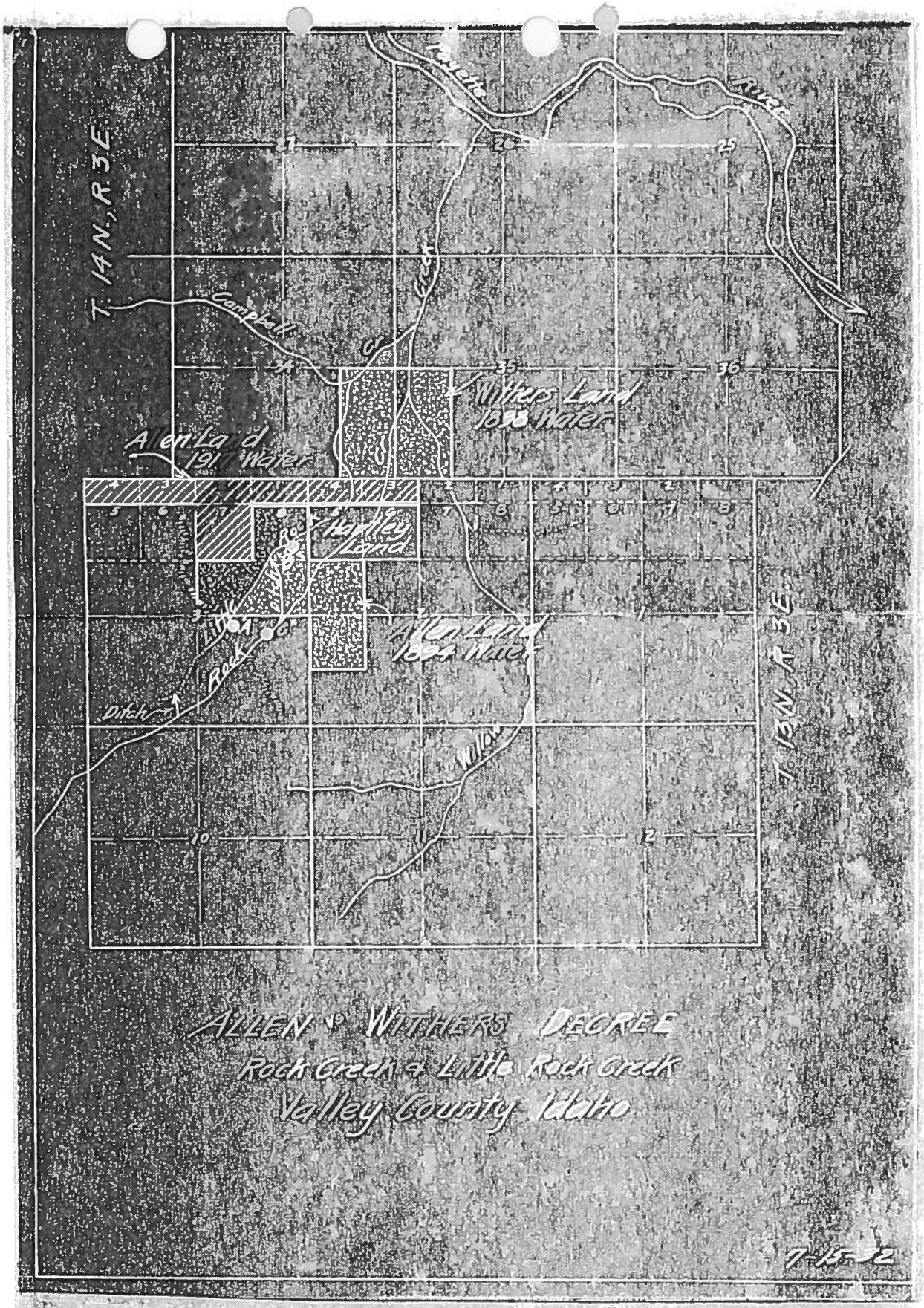
For the present, or during the rest of this irrigation year, there does not appear to be any relief feasible or action to be taken by the Department of Reclamation further than to assist in getting Hartley and Worthington into court for diversion of the LITTLE ROCK CREEK water decreed to Withers. Withers understands the whole situation now, I think, and did not suggest nor ask for anything else. However, both of the suggested court actions should be initiated immediately so they can be under way at the September term in Valley County. Otherwise, they will go over to next June, too late for relief in 1933.

After these two matters are decided, a watermaster may be desirable, depending upon the relations of the parties afterward.

It was Withers' opinion that the Cascade municipal waterworks, which has a reservoir at the head of ROCK CREEK, might be taking water to fill their reservoir, which would account for the low flow of the creek. This reservoir could be filled either before or after the beginning of the irrigation season. It should be filled before, if possible, so a watermaster could adjust this matter as well as regulate the diversions from the two streams. Both parties were agreed upon a suitable man, one ENOS SMITH of Cascade, but inquired as to the cost. There is nothing to be gained by putting a watermaster in charge for the rest of this year.

Geo. N. Carter

Boise-Idaho
July 18, 1932


T. 14 N., R. 3 E.
T. 13 N., R. 3 E.
Creek
River
Campbell
Creek
Allen Land
1917 Water
Wither Land
1918 Water
Valley Land
Allen Land
1924 Water
Rock
Ditch
Mill
ALLEN V. WITHERS DECREE
Rock Creek & Little Rock Creek
Valley County Idaho
7-15-2

No trans
6-24-59 RJ

Title of Case: Mary R. and D.K. Allen vs W.N. and Maud Withers

Source: Rock Cr. trib Willow Creek Page:

Water Dist.: 7th 20K County: Valley

Judicial Dist.: 7th Judge: A.O. Sutton 20H

Date of Decree: 10-10-30 Recorded in Book No.: at Page No.: File No.: 20K-5

NAME	AMOUNT INCHES OR ~~CFS~~ & / SEC. FT	PRIORITY	DIVERSION SUBDIV.	SEC.	TWP.	RG.	REMARKS, LAND TO BE IRRIGATED, ETC.
Mary R. & D.K. Allen Rock Cr.	160	6-1-94					SW¼NW¼, NW¼SW¼ 2; Lots 8, SW¼NE¼, SE¼NE¼ 3-13N-3E
" "	100	7-4-17					Lots 3, 4 2; Lots 1, 2, 3, & 7 3-13N-3E
W.N. and Maud Withers Little "	30	6-1-98					E½SE¼ 34; W½SW¼ 35-14N-3E
" Rock Cr.	80	6-1-98					

DECREE INDEX

RICHARDS / ROCK / UNNAMED STREAM

NUMBER	STATUS	PRIORITY DATE	DIVERSION RATE (cfs)	WATER USE	PERIOD USE	POINT OF DIVERSION	OWNER
65-3111X	DECREED	6/01/1894	2.700 CFS	IRRIGATION	04/15 - 10/15	NW1/4 SE1/4 SEC 3	E K ALLEN RANCH LTD PARTNERSHIP
65-3111F	DECREED	6/01/1894	.400 CFS	IRRIGATION	04/15 - 10/15	NW1/4 SE1/4 SEC 3	USA ACTING THROUGH BUREA OF RECLAMATION
65-3111A	DECREED	6/01/1894	.050 CFS	DOMESTIC	01/01 - 12/31	NW1/4 SE1/4 SEC 3	WEST MOUNTAIN WATER ASSN INC
65-8012	DECREED	4/1/1960	.020 CFS	DOMESTIC	01/01 - 12/31	SW1/4 NE1/4 SEC 3	DARREL H DORHMAN
65-8808	DECREED	5/1/1966	.040 CFS	DOMESTIC	01/01 - 12/31	NW1/4 SE1/4 SEC 3	ROBERT L CHESTER McClintick
65-10439	DECREED	6/1/1967	.040 CFS	DOMESTIC	01/01 - 12/31	NW1/4 NE1/4 SEC 3	BRETT FORREY
65-1880	DECREED	8/15/1968	.010 CFS	DOMESTIC	01/01 - 12/31	NW1/4 SE1/4 SEC 3	CINDI BETHEL CARMONA
65-7272	DECREED	4/13/1972	.020 CFS	DOMESTIC	01/01 - 12/31	SW1/4 NE1/4 SEC 3	GUS HINES
65-13088	LICENSE	7/26/1989	.050 CFS	DOMESTIC	01/01 - 12/31	NE1/4 SW1/4 SEC 3	WEST MOUNTAIN WATER ASSN INC
65-23451	APPLICATION	4/18/2011	.140 CFS	STOCKWATER	01/01 - 12/31	NW1/4 SW1/4 SEC 3	MOORE SMITH BUXTON & TURCKE CHTD
			2.700 CFS	IRRIGATION	10/16 - 12/01	SE1/4 NE1/4 SEC 3	C/O BRUCE M SMITH, ALLEN RANCH LLP
			2.700 CFS	IRRIGATION	04/01 - 04/14		
65-23457	APPLICATION	6/16/2011	.040 CFS	AESTHETIC	04/01 - 11/14	NE1/4 SW1/4 SEC 3	GLENN FORD

— RIGHTS 65-3111A AND 65-13088 WHEN COMBINED SHALL NOT EXCEED .05 CFS. AND COMBINED VOLUME OF 36.2 AFA.

B

MEMORANDUM

TO: John Westra

FROM: Angie Grimm

DATE: November 23, 2010

RE: Chess/JR Allen Complaint Investigation

Steve Lester and I conducted a site investigation on 11/18/10. We meet with JR Allen on his property. Mr. Allen showed us the old POD (abandoned approximately 6 years ago), the POD for the southside acres (still in use), and the original POD (still in use) for his right 65-3111X. We were able to determine where the main ditch and southside ditch of Mr. Allen's diversion system are located relative to Rock Ck, aka Richard's Ck, and the irrigated acres of the POU for right 65-3111X. Water was being diverted from both active PODs at time of site visit.

Summary of Complaint and Site Investigation

Timeline of Events:

- Sandra Chess submitted original complaint via email on 10/22/10.
- Complaint stated E K Allen Ranches has diverted water from POD not on recorded water right 65-3111X and that diversion is occurring outside the authorized season of use.
- Steve Lester and I conducted site visit on 11/18/10.

Site Investigation:

- First Mr. Allen showed us the old POD site located in NWSE Sec 3 T13N R03E per GPS location collected. Mr. Allen stated this POD was abandoned approximately 6 years ago.
- Then to POD on Rock Ck (Richard's Ck) where Mr. Allen diverts water for the southside acres of his POU. This POD is located in the SENE Sec 3 T13N R03E per GPS location collected.
- Collected GPS locations where the main ditch (referred to as Home Ranch Ck by Mr. Allen) crosses West Mountain Rd and Teepee Rd.
- Collected GPS location on road just above the main ditch POD on Rock Ck (Richard's Ck) in the NWSW Sec 3 T13N R03E. Mr. Allen said this POD is the original POD for the right and has been the site for the diversion into the main ditch for as long as he can remember.
- Mr. Allen stated he diverts water from Rock Ck down his main ditch (Home Ranch Ck) year round for two purposes; 1) stockwater and 2) he can't access the POD until June most years (due to location/conditions), but he needs water for irrigation in May.

- Mr. Allen stated he plans to do some work in the stream channel of Rock Ck in the next couple of weeks to repair the original POD upstream of the diversion dam as well as in the main ditch (Home Ranch Ck) just downstream of the diversion dam to stop leakage currently occurring from ditch back into Rock Ck.
- Did not GPS location of West Mountain Water Assn Inc (subdivision rights) POD, but determined pipe diverting water for this right is adjacent to the main ditch (Home Ranch Ck) where it crosses West Mountain Rd in the SENW Sec 3 T13N R03E. Based on this information, the fact that the POD is downstream from E K Allen Ranches POD, and the map, the POD for the subdivision must be located in the SENW, NESW, or NWSW of Sec 3 T13N R03E.
- Mr. Allen said he communicates with the subdivision rights' owner regarding when Mr. Allen needs to let more water past his diversion down Rock Ck to subdivision diversion. He said there have been no complaints for the subdivision rights' owner regarding not enough water to fulfill the right(s).
- A map based on GPS locations collected and pictures are attached for reference.

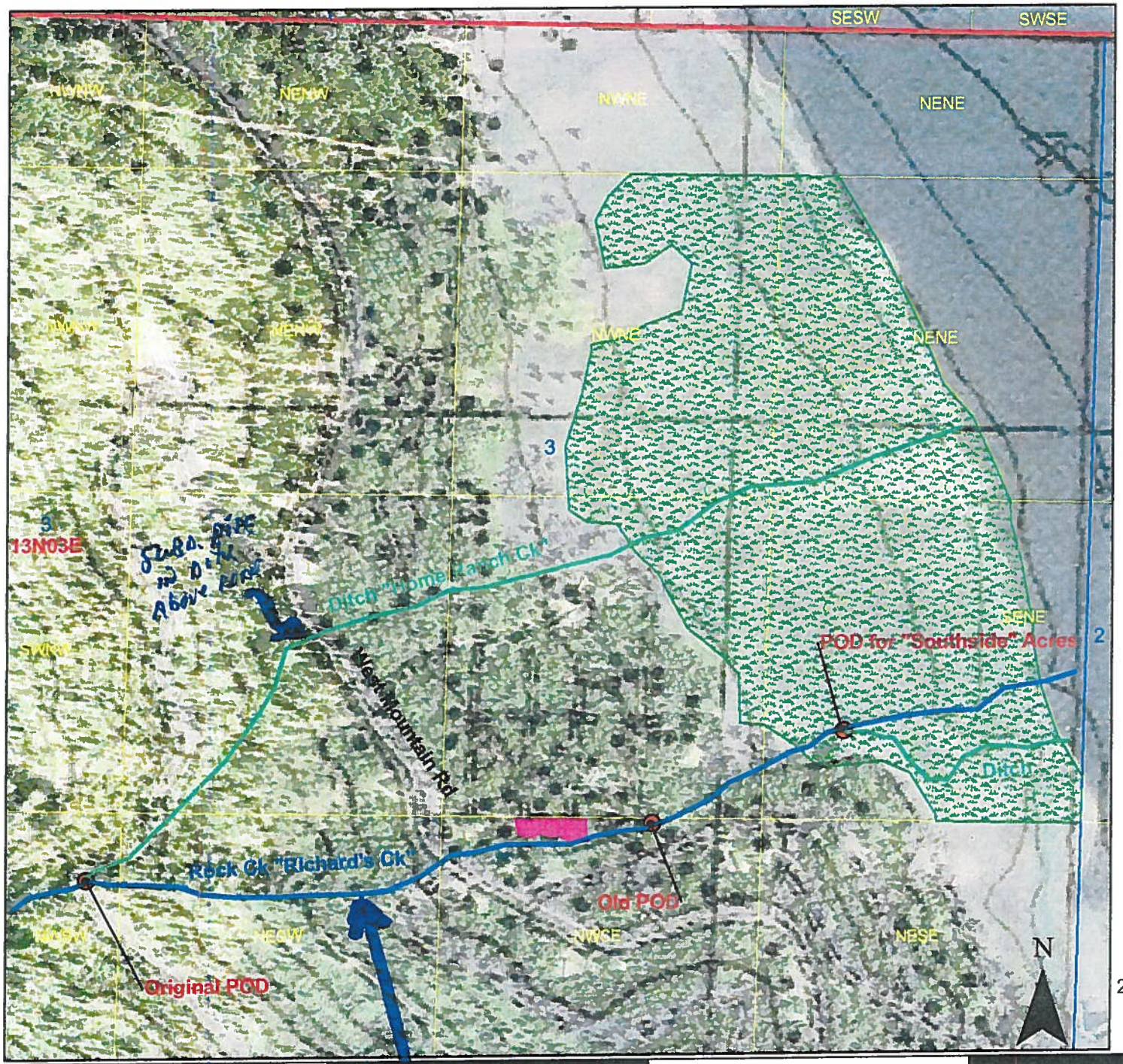
Conclusions:

- Original POD and POD for southside acres of right 65-3111X is not recorded on the right. The Old POD (now abandoned) is the only POD recorded for the right.
- Diversion of right 65-3111X is occurring outside of the authorized season of use.
- The subdivision rights are 65-13088 and 65-3111A. 65-3111A POD is recorded as being in the NWSE of Sec 3 T13N R3E, but is more likely in the NESW Sec 3 T13N R03E based on recorded location of 65-13088 POD and site investigation info.

Recommendations for Further Action:

- Department should formally inform Mr. Allen that the POD information currently recorded for right 65-3111X is incorrect. He needs to change the POD from the NWSE (old POD) to the NWSW of Sec 3 (original POD) and add a POD in the SENE of Sec 3 (POD for southside acres) via filing a Transfer application.
- Department should inform Mr. Allen that right 65-3111X only authorizes diversion of water from 4/15 to 10/15 of each year for irrigation purposes. Year round diversion for stockwater purposes is not currently recorded on the right.
- Department should inform the West Mountain Water Assn Inc. that the POD for right 65-3111A is incorrect. A Transfer should be filed to correct the POD from the NWSE to the NESW assuming the POD for both subdivision rights is the same.

Chess/JR Allen Complaint Field Investigation Map



Legend

- Chess Property (Taxlot)
- 65-3111X POU
- Township/Range
- Sections
- QQ

2009 Aireal Photo with USGS Quad overlay

Chess/JR Allen Complaint 11/18/2010 Photo #1: Old POD for right 65-3111X. POD abandoned approximately 6 years ago. Orange in far left background of photo remains of diversion dam.

Chess/JR Allen Complaint 11/18/2010 Photo #2: POD for southside acres of right 65-3111X. Water diverted from Rock Ck "Richard's Ck" (foreground and far left of picture) via rusted culvert pipe and ditch (middle ground right of picture).

Field Report

Temporary Water Appropriation #TP-65-26
JR Allen Ranch, Cascade
From: J. Westra
Date: 10/31/11

On October 31, 2011, I completed a random field inspection relating to the above temporary water permit.

First, I observed the Allen upper point of diversion off Rock/Richards Creek, see #3 on the 11/18/10 field investigation map attached.
A large log was serving as the obstruction for diversion to the Allen ditch. By visual estimation, it appeared the ditch and creek flows were equally divided- photo 2.

Second, A creek flow measurement was made at the creek and West Mountain Road culvert (3 ft. dia.) upstream side. The measurement was made with a 1 foot copelletti weir which read .47 cfs (5% added for leakage between weir and culvert sides)- see photo 6.

Third, A ditch measurement was made at off the 3-1/2 ft. weir board at the upstream side of the large culvert to the north west of the pasture gate off Allen Road, the measurement was .38 cfs. An approx. check was made by pail and stop watch at the Allen ditch and West Mountain Road intersection culvert as I was concerned the measurement was some distance downstream of the creek measurement at the road. The pail measurements averaged close to the weir board reading- photos 4&5.

Fourth, I viewed the pasture area from the Campbell Creek boat dock area. The reservoir was drawn down considerably. There was less than 100 cattle near the creek and ditch area—There may have been more livestock along the pasture fringes. 100 hd= .03cfs flow rate= .06 ac-ft/day volume X 14 days=
Approx. to date consumed volume = .84 ac-ft

Conclusions:
From the field observations and measurements, the Allen Ranch is complying with the temporary permit parameters and conditions of approval.

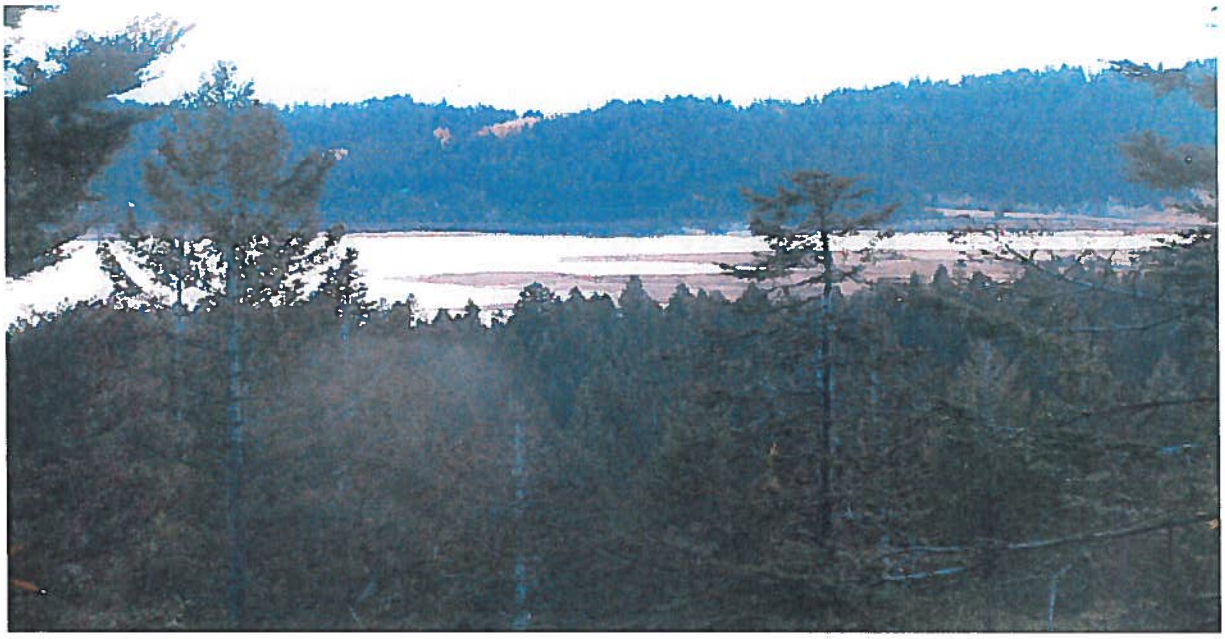
On 11/03/11, I contacted Dale Allen at the McCall Office of Fish and Game. He confirmed the creek is not considered a fishery.

PHOTOGRAPHS

Taken 10/31/11 By J. Westra

1. Richards/Rock Creek upstream of the Allen Diversion and Willow Creek Rd. Steep hillside grade

2. Allen upper creek diversion, Allen ditch to the left.

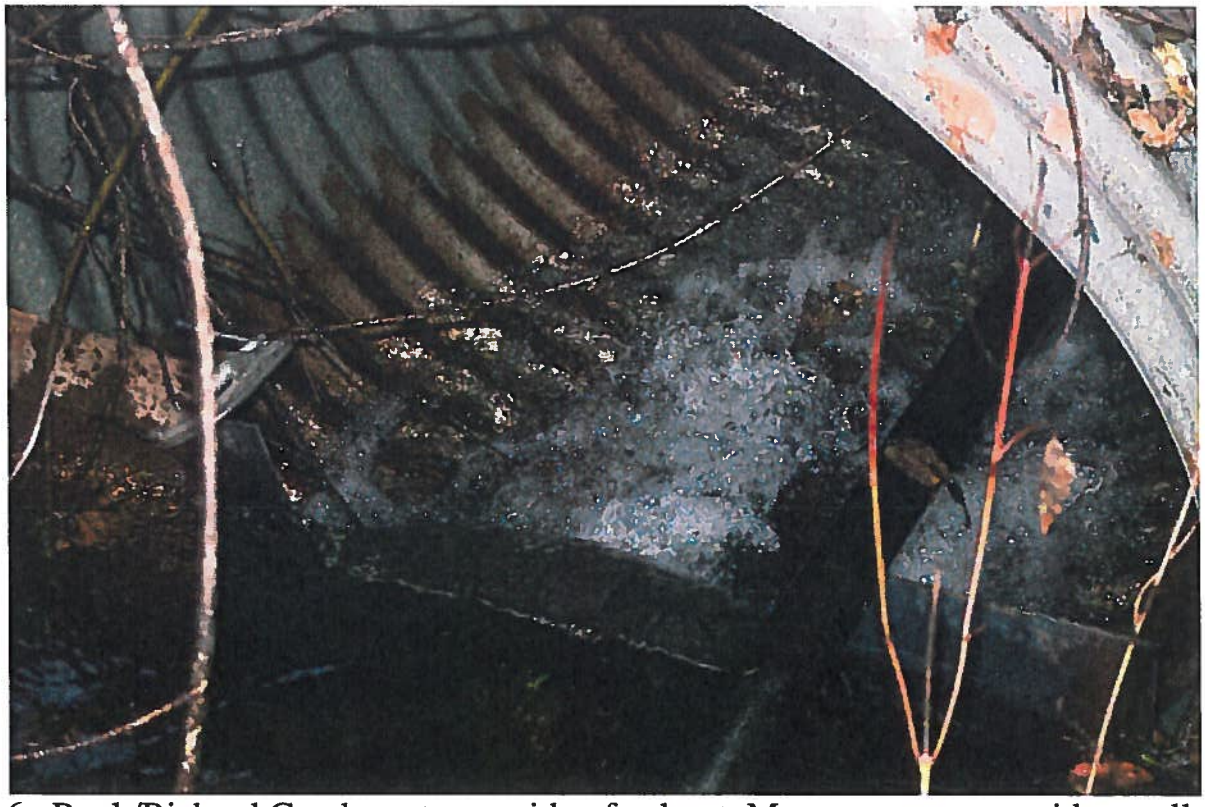


3. Overview of the reservoir from Willow Creek Rd. Reservoir is low, note sand bars.

4. Allen ditch culvert outlet at West Mountain Rd. Very overgrown with vegetation.

Page 3 Photos.

5. Allen ditch Culvert Weir Board northwest of pasture gate

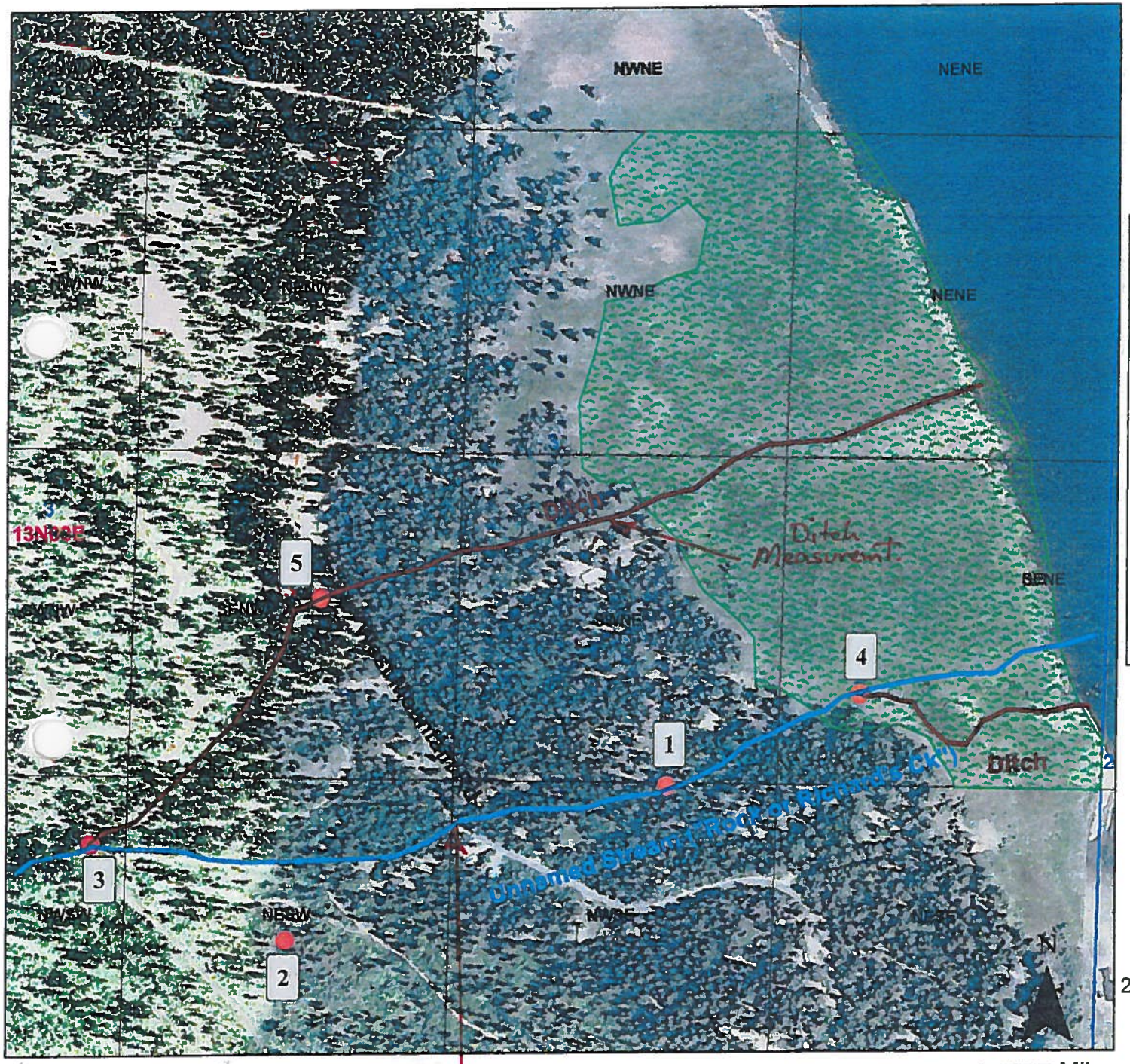


6. Rock/Richard Creek upstream side of culvert. Measurement was with cepollette weir blade.

7. Reservoir shoreline and pasture boundary from the Campbell boat ramp.

8. Livestock and pasture in the Allen ditch and Rock/Richard Creek area- <100 hd.

IDWR Field Investigation Map 11/18/2010 AND 10/31/11



Legend

- 1 DIVERSION 65-3111A-F-X
- 2 DIVERSION 65-13088
- 3 ALLEN UPPER DIVERSION
- 4 ALLEN LOWER DIVERSION
- 5 PIPE IN DITCH
- 65-3111X POU
- Township/Range
- Sections
- QQ

2009 Aerial Photo

MEMORANDUM

TO: John Westra

FROM: Angie Grimm

DATE: November 18, 2011

RE: JR Allen Temporary WR (TP-65-26) Site Visit

I conducted a site visit for this temporary water right on 11/17/11. I took measurements at three culverts to assist the Western Regional Manager in ascertaining the flow at each location. The following is a summary of measurements, photos, etc from each location visited.

1. **Allen Ditch Culvert @ West Mountain Rd:**
   - GPS location recorded (IDTM): 2333838 Easting 1478843 Northing
   - Depth of Water = 1.8 in
   - Width of Water = 1.3 ft
   - See photos attached: #1

2. **Unnamed Stream (Richard's/Rock Creek) @ West Mountain Rd:**
   - GPS Location (IDTM): 2334037 Easting 1478592 Northing
   - Depth of Water = 2.4 in
   - Width of Water = 1.7 ft
   - See photos attached: #2 & #3

3. **Allen Ditch Culvert Inside Allen Pasture:**
   - Depth of Water = 0.9 in
   - Width of Water ≈ 4 ft
   - See photos attached: #4 & #5

4. **Allen Pasture:**
   - No cattle present in pasture.
   - See photos attached: #6 thru #8.

E

JR Allen Site Visit 11/17/2011 Photo #1: Allen Ditch culvert underneath West Mountain Rd, downstream side.

JR Allen Site Visit 11/17/2011 Photo #2: Unnamed Stream (Richard's Creek) culvert underneath West Mountain Rd, downstream side.

JR Allen Site Visit 11/17/2011 Photo #3: Unnamed Stream (Richard's Creek) approximately 50 ft downstream of culvert underneath West Mountain Rd.

JR Allen Site Visit 11/17/2011 Photo #4: Allen Ditch culvert inside pasture, upstream side.

JR Allen Site Visit 11/17/2011 Photo #5: Allen Ditch inside pasture, approximately 5 ft downstream of culvert.

JR Allen Site Visit 11/17/11 Photo #6: Allen pasture at end of Allen Rd facing east/southeast towards the reservoir. Note no cattle present.

JR Allen Site Visit 11/17/11 Photo #7: Allen pasture at Allen Ditch facing east towards the reservoir. Note no cattle present.

JR Allen Site Visit 11/17/11 Photo #8: Allen pasture from Allen Ditch facing northeast. Note no cattle present.

Field Inspection Report

Temporary Appropriation #TP-65-26 Allen Ranches, Cascade
From: J. Westra JFW
Date: 12/21/11

RE: Inspection of Upper Diversion Works

On Wednesday, December 21, 2011, I made a random inspection of the Allen upper diversion site and checked the Allen ditch and Rock/Richards Creek culverts under W. Mtn. Road.

No changes were noted in the upper diversion works since the last field check on 10/31/11. The main diversion consists of a large log in front of the creek channel; flow is divided between the creek and ditch channels, see photo #1. There is minimal snow on the mountain- approx. 3-4 inches snow pack on the access road. The Allen ditch and creek are flowing open water with some scattered thin ice patch cover. The creek and ditch downstream of W. Mtn. Road are also flowing open water with scatter thin patches of ice cover.

No cattle occupied the pasture, no beneficial use of water noted.

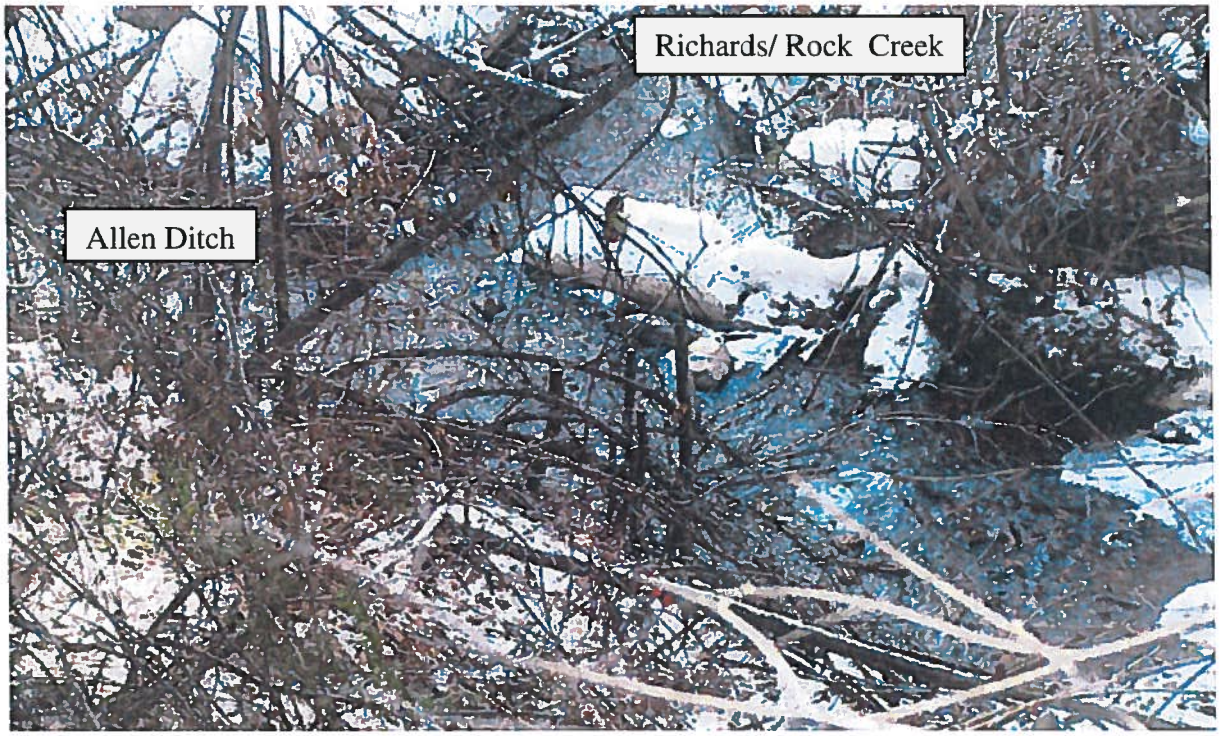
Approx. culvert water depths @ W. Mtn. Road:

Allen Ditch	= 1.5 inches
Richards/Rock Creek	= 2.5 inches

Water depths are close to the depths recorded on 11/18/11
12/21/11 Weather: Low- 6 degrees F
High 27 degrees F

F

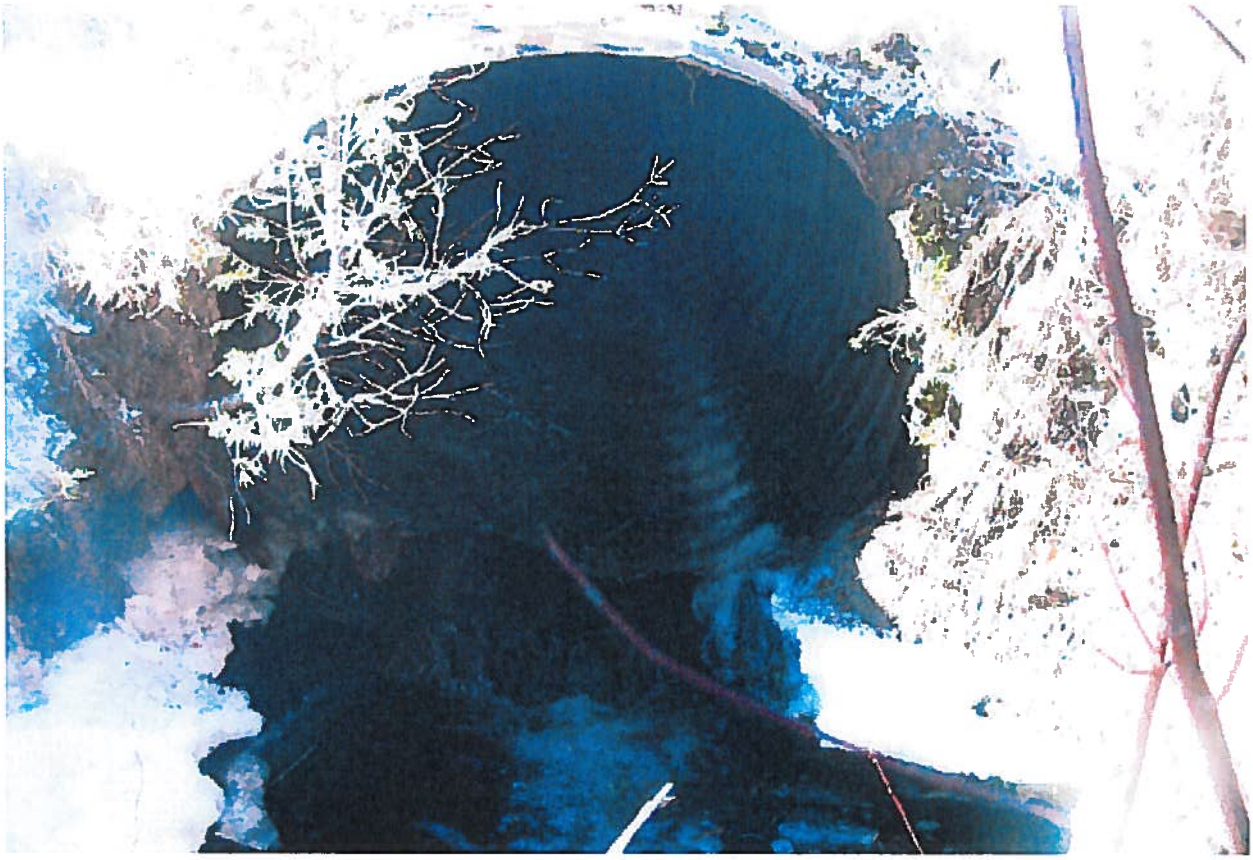
Photographs By J. Westra 12/21/11



1. Diversion log remains in the creek channel. No change since previous inspection on 10/31/11.

2. Creek Channel just downstream of the Allen Ditch, open water with a few ice patches.

3. Allen Ditch culvert under W. Mtn. Road (Downstream side)



4. Richards/Rock Creek culvert under W. Mtn. Road. Flow is still open, thin ice over the top.

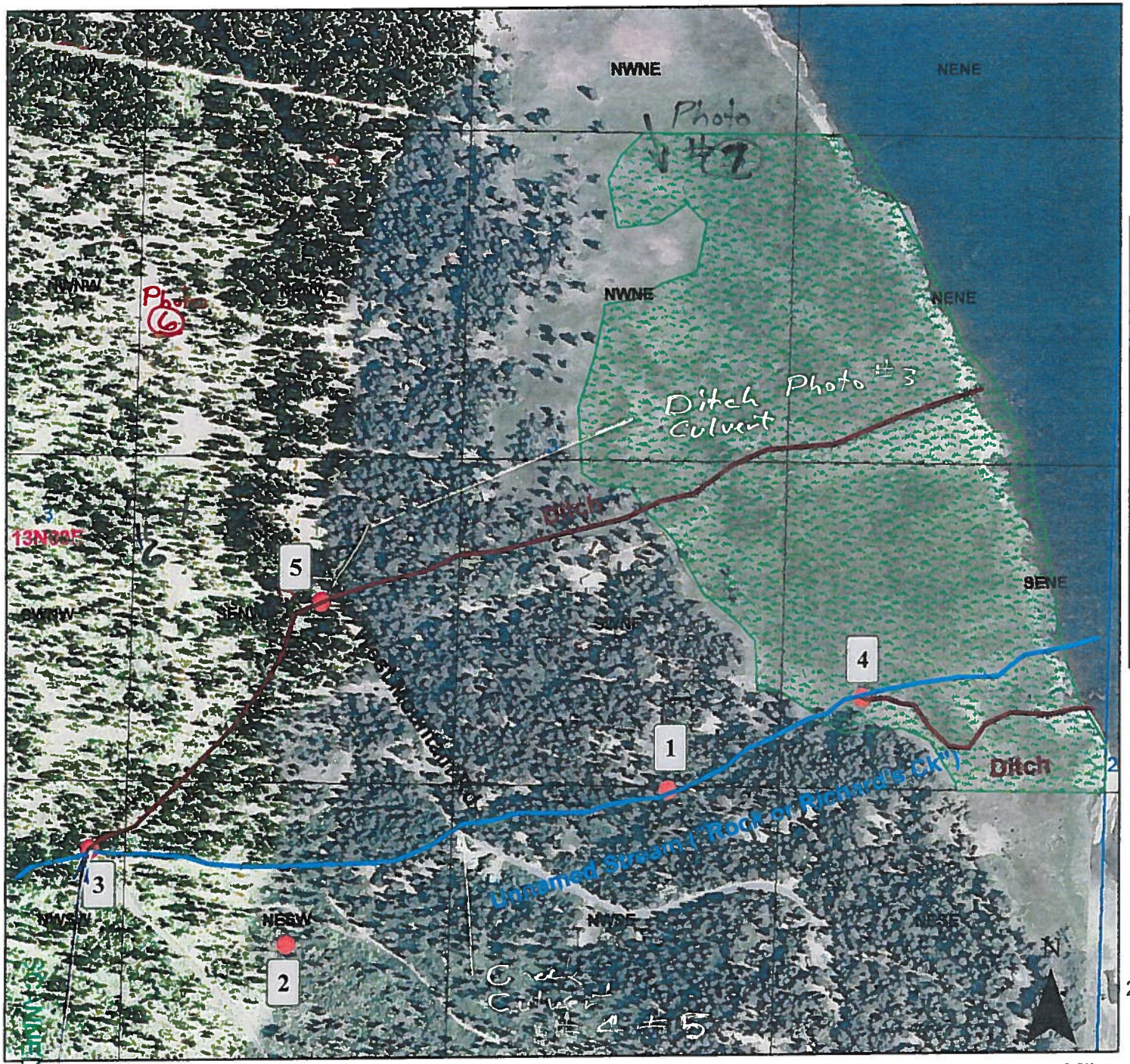
5. Creek channel below the culvert. Some thin ice cover in spots with open water.

6. Access road to the upper diversion- Approx. 3-4 inches of snow, ice on the lower steep stretch.

Page 5 Photos

7. Cattle have been removed from pasture area, no beneficial water use.

IDWR Field Investigation Map 11/18/2010 – 12/21/11



Legend

- 1 DIVERSION 65-3111A-F-X
- 2 DIVERSION 65-13088
- 3 ALLEN UPPER DIVERSION
- 4 ALLEN LOWER DIVERSION
- 5 PIPE IN DITCH
- 65-3111X POU
- Township/Range
- Sections
- QQ

2009 Aerial Photo

Miles

0 0.1 0.2 0.4 0.6 0.8

Photos #1 + #2

Summary of Actions

10/13/11 Temporary Water Appropriation Application # TP-65-26 submitted by applicant.

10/18/11 Application for the Temporary Water Appropriation Approved Period of use 10/16/11 to 11/20/11.

10/31/11 Field Inspection for compliance made by IDWR

11/18/11 Field Inspection for compliance made by IDWR

12/07/11 IDWR sends the Applicant a letter to notify him the temporary appropriation period of use expired on 11/20/11. The diversion works needed to be removed as soon as possible.

12/21/11 A field inspection is made to determine the status of the diversion works. The diversion works had not been removed.

Contacts:

Sandra Chess
1200 Lizaso Ave
Boise ID 83709

JR Allen
Allen Ranch llP
2624 S Inglenook PL
Meridian ID 83642

Bruce Smith
Moore Smith Buxton & Turcke Chtd.
950 W Bannock ST Ste 520
Boise ID 83702