

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

**IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 65-23451 IN THE NAME OF)
ALLEN RANCH LLP AND APPLICATION)
FOR TRANSFER NO. 77121 IN THE)
NAME OF ALLEN RANCH LLP)
_____)**

**ORDER DENYING PETITION
TO POSTPONE HEARINGS**

FINDINGS OF FACT

1. This order addresses contested cases for the following two applications ("the applications"):
 - a. On March 16, 2011, Allen Ranch, LLP, ("Allen") applied to the Department of Water Resources ("Department") to transfer the point of diversion of Water Right No. 65-3111X. The source of water for Right No. 65-3111X is an unnamed tributary of the North Fork of the Payette River. The Department designated the transfer application as Application No. 77121 ("Allen transfer").
 - b. On April 18, 2011, Allen applied to the Department to appropriate 2.70 cfs of water from the same unnamed tributary of the North Fork of the Payette River that is the source of water for Right No. 65-3111X. Allen proposes to use water for irrigation and stockwater purposes. The Department designated the application as Application No. 65-23451.
2. J.R. Allen is general partner in Allen Ranch, LLP.
3. On April 27, 2011, West Mountain Water Association, Inc., ("West Mountain") applied to the Department of Water Resources ("Department") to transfer the point of diversion and place of use for Water Right Nos. 65-3111A and 65-13088. The source of water for Right Nos. 65-3111A and 65-13088 is the same stream source for Right No. 65-3111X and Application No. 65-23451. The Department designated the transfer application as Application No. 77209 ("West Mountain transfer" or "West Mountain application").
4. On June 16, 2011, Glenn Ford and Joyce Ford ("Fords") applied to the Department to appropriate 0.04 cfs of water from the same stream that is the source of water for Right Nos. 65-3111X, 65-3111A, and 65-13088, and for Application No. 65-23451. Fords propose to use water for aesthetic purposes. The Department designated the application as Application No. 65-23457 ("Ford application").

5. The stream source for Right Nos. 65-3111X, 65-3111A, and 65-13088, and for Application Nos. 65-23451 and 65-23457 is variously referred to as Rock Creek, Richard Creek, or unnamed stream.
6. In conformance with the requirements of Idaho Code §§ 42-203A(2) and 42-222(1), the Department caused notice of each of the applications to be published.
7. The two Allen applications were each protested by more than ten individuals or organizations. Allen and all the protestants from the Allen applications will collectively be called "the Parties" in the remainder of this order.
8. Allen protested the applications filed by West Mountain and Fords.
9. After consulting Allen's attorney, on January 18, 2012, the Department scheduled a hearing to consider Allen's two applications on May 8 and 9, 2012. The Department notified all the Parties of the hearing dates. In its notice setting the dates for the hearing, the Department also notified the Parties that they must provide copies of exhibits that may be offered at the hearing to all other Parties and to the hearing officer by April 24, 2012.
10. After consulting Allen's attorney, on January 18, 2012, the Department scheduled a hearing to consider West Mountain's application and Fords' application on July 17 and 18, 2012. The Department notified all the Parties of the hearing dates.
11. On January 20, 2012, Allen's attorney notified the Department that J.R. Allen would not be available for the May 8 and 9, 2012, hearing, and he requested that the hearing be rescheduled.
12. On February 8, 2012, in response to the Department's request for clarification of the rescheduling request, Allen's attorney notified the Department that J.R. Allen "will be out of town and out of the country from May through July." The response provided no further explanation.
13. On February 24, 2012, the Department's hearing officer denied Allen's request to postpone the scheduled hearing.
14. On April 6, 2012, Allen again requested postponement of the hearing because J.R. Allen will be out of the country on the hearing dates. Allen proposed combining the hearing with the hearings scheduled for the applications filed by West Mountain and Fords. The hearings for West Mountain and Fords are scheduled for July 17 and 18, 2012. Allen asserts that two days should be sufficient time to hear testimony in connection with both Allen applications and the West Mountain and Ford applications.
15. The Department sought comment from the Parties on Allen's request. Comments were due by April 20, 2012. The Department received comments from seven Parties. Six opposed postponing the hearing and one suggested conditions for

postponing the hearing. The reasons most commonly expressed by the Parties for opposing postponement of the hearing are:

- a. Two days would be insufficient time to hear four applications.
- b. Work schedule conflicts.

CONCLUSIONS OF LAW

Allen did not cite a statute or rule in support of his request to postpone the hearing. The hearing officer will apply the standard in Rule 16(b) of the Idaho Rules of Civil Procedure. Rule 16(b) states, "A schedule shall not be modified except by leave of the judge or a magistrate upon a showing of good cause."

Allen proposes to postpone the hearing because J.R. Allen will be out of the country. Allen has not explained why J.R. Allen will be out of the country. Therefore, the hearing officer cannot discern whether the trip out of the country is a matter of necessity or a matter of choice.

Allen proposes that the hearing for the two Allen applications should be held in July in conjunction with the hearings for the West Mountain and Ford applications. To meet the review requirements of Idaho Code §§ 42-203A and 42-222(1) for the applications, particularly the sufficiency of water supply and injury review requirements, the Department must know and account for the quantity, timing, and location of each appropriation from the same water source. This is especially true on a small stream such as the one that is the source for the water rights and proposed water rights in the four applications. The hearing for Allen's applications was scheduled before the West Mountain and Ford applications because the Allen applications were filed first. If the Allen applications are not considered before the West Mountain and Ford applications, then a complete understanding of the prior appropriations from the source stream will not be available when the West Mountain and Ford applications are reviewed, and the Department would risk making an incorrect determination of the water supply and the potential for injury in the West Mountain and Ford cases.

Hearing all four applications at once, as proposed by Allen, could potentially satisfy the need to resolve the Allen applications before considering the West Mountain and Ford applications. However, two Parties have expressed concern that two days may not be long enough to hear testimony for four applications. The hearing officer shares this concern, especially with so many Parties involved. In addition, it is likely that it would take the hearing officer longer to prepare decisions for four applications after the July hearing dates than it would for only two. The delay would injure West Mountain and Fords.

In addition to the harm that could be done to West Mountain and Fords by delaying the hearings, the hearing officer must also consider the number of Parties involved. With so many Parties involved in the Allen applications, it is extremely difficult to find hearing dates that are convenient for everyone. In their comments on the Allen request, five

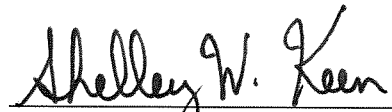
Parties expressed that the proposed change from May to July would severely inconvenience them.

In summary, Allen has not shown good cause why the hearing should be postponed. Allen has not provided a reason why J.R. Allen must be out of the country at the time when the hearing is scheduled. Moreover, postponing the hearing would injure West Mountain and Fords. Finally, postponing the hearing would severely inconvenience a number of other Parties to the proceeding.

ORDER

1. Allen's petition to delay the hearings for the applications is **DENIED**.
2. The deadline for submitting copies of exhibits that may be offered at the hearing is extended to April 30, 2012.

Dated this 23rd day of April, 2012.

A handwritten signature in black ink, reading "Shelley W. Keen", written over a horizontal line.

Shelley W. Keen
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2012, I mailed a true and correct copy, postage prepaid, of the foregoing ORDER DENYING PETITION TO POSTPONE HEARINGS to the person(s) listed below:

RE: Transfer No.: 77121- Allen Ranch LLP
77209- West Mtn Water Assoc.
Application for Permit No: 65-23451- Allen Ranch LLP
65-23451- Glenn & Joyce Ford

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A handwritten signature in cursive script, reading "Jean Hersley", is positioned above a horizontal line. The signature is written in a dark ink and is centered horizontally.

Jean Hersley

Technical Records Specialist I