



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

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C.L. "BUTCH" OTTER, Governor
GARY SPACKMAN, Interim Director

December 13, 2010

J R ALLEN
3166 CENTENNIAL AVE
BOISE ID 83706

Re: Water Right No. 65-3111X

Dear Mr. Allen:

Idaho Department of Water Resources (IDWR) staff visited the site of the above referenced water right with you on November 18, 2010, regarding a complaint about the situation. We appreciated your time to show us around the site and explain how your irrigation system works. This letter is to provide you with the results of that fieldwork and implications for your water right.

Please see the enclosed map showing sites 1 through 5 in T13N, R3E, Section 3 as follows:

1. Recorded diversion point for rights 65-3111A (subdivision), 65-3111F (Bureau of Reclamation) and 65-3111X (Allen) – in NWSE.
2. Recorded diversion point for right 65-13088 (subdivision) – in NESW (interpreted as somewhere on the creek in the $\frac{1}{4}$ $\frac{1}{4}$, not in the center of the tract).
3. Actual Allen upper diversion point – in NWSW.
4. Actual Allen lower diversion point – in SENE.
5. Pipe in ditch ("Home Ranch Creek") above West Mtn. Road – in SENW.

The diversions are from the unnamed stream locally known as "Rock Creek or Richard Creek."

Point #1 is an abandoned diversion. This means rights 65-3111A, F and X need to be corrected to accurately describe actual diversion points being used. For your right, this will include identifying the correct diversion points in NWSW (point #3) and SENE (point #4).

Water was being diverted in your upper diversion during the November visit. Your irrigation right authorizes diversion from April 15 through October 15. The amount of water to be diverted is limited to 2.70 cfs (135 inches) to irrigate 83 acres. The right exceeds one inch per acre and apparently covers ditch losses. Although not recorded on your irrigation right or on any other right, incidental stock water use during the irrigation season is considered a legitimate use under your irrigation right.

Right 65-3111X should be corrected to identify your upper and lower diversion points that are being used. This can be done by filing an Application for Transfer to delete the NWSE point and add the NWSW and SENE points.

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A new water right would be needed to divert water for *your use* (emphasis added) outside of the irrigation season. An Application for Permit could be filed for a new right. Perhaps a new stockwater right for the non-irrigation season would be useful. However, stockwater rights are limited by the type and number of animals, generally providing much smaller flow rates than your irrigation right. The enclosed stockwater table lists the maximum diversion rates for stock use. Maybe some other type of new right could be obtained for the non-irrigation season, although it is hard to imagine what that might be. Please see the enclosed list of beneficial uses to see if anything useful can be identified for a new right. Simply diverting water down the ditch is not considered a beneficial use for your property – the diverted water would need to be used for something more tangible than that.

However, IDWR understands an agreement between you and the subdivision results in water diverted via your upper diversion to provide water to a subdivision pipe apparently originating in that ditch. If correct, this implies at least two things:

- Water is diverted for year around domestic use under one or both subdivision rights.
- One or both subdivision rights should include your upper diversion point as a diversion point for the subdivision.

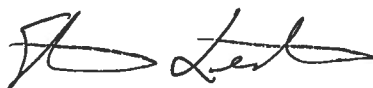
Under that scenario, the subdivision would be diverting water during the non-irrigation season in an agreement allowing use of your ditch.

In summary, you should correct right 65-3111X to identify the correct diversion points. You should not divert more than 2.70 cfs during the irrigation season for your use. Water should not be diverted during the non-irrigation season for your use unless you establish a new right for that. Water can be legally diverted in your upper diversion for year around subdivision use, assuming the subdivision corrects its water right records to cover this.

I understand you have retained attorney Bruce Smith to help you with these matters. A courtesy copy of this letter is being sent to him. A copy is also provided to the West Mountain Water Assn Inc. That organization should look into correcting right 65-3111A and/or right 65-13088 to properly identify the actual diversion point(s) used under those rights. Correcting 65-13088 should include using "Unnamed Stream" as the source and "North Fork Payette River" for the tributary. A copy is also provided to the Bureau of Reclamation to help correct right 65-3111F. Those water right owners should file Applications for Transfers to correct their rights.

IDWR forms and other information are available at www.idwr.idaho.gov. You and any of the other parties are welcome to contact me for more information. Thank you for your attention to this matter.

Sincerely,



Steve Lester
Water Rights Supervisor

Enclosures

Cc: Bruce Smith
West Mountain Water Assn Inc.
Bureau of Reclamation

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