



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

December 15, 2010

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WATER RESOURCES
WESTERN REGION

Sandra Chess
1200 Lizaso Ave
Boise ID 83709

RE: Complaint: Water Right #65-3111X- E K Allen Ranches Inc

Dear Ms. Chess:

This letter is a response and follow-up to your complaint against E K Allen Ranches Inc dated November 1, 2010. The complaint alleged Mr. Allen was diverting irrigation water from a point of diversion not authorized and outside the designated period under water right #65-3111X.

Water Right #65-3111X Background

The 1970's Payette River Basin Adjudication (PRBA) resulted in a decree of this water right with a point of diversion authorized in the NE1/4SE1/4, Section 3, Township 13N, Range 03E. Review of this right in the recent Snake River Basin Adjudication (SRBA) found that the stream does not flow in the NE1/4SE1/4 of Section 3; the right was recommended with a point of diversion in the NW1/4SE1/4 of Section 3 based on review maps from the PRBA (see attached map and review sheet). The same scenario appears to repeat with sister water right records #65-3111A-West Mountain Water Assoc. Inc. and #65-3111F-Bureau of Reclamation. Our records indicate that right holders did not challenge the SRBA recommendations. The rights were decreed in 2000 by the SRBA court all showing the point of diversion location as NW1/4SE1/4 of Section 3. Right #65-3111X only authorizes irrigation use during the period from April 15 to October 15 each year.

GPS Field Locations

In late November of this year, staff from our Western Region office took GPS readings at the site. The following was recorded (see attached map):

- *Current main diversion location on upper Rock Creek to a main ditch (referred to as Home Ranch Creek) in the NW1/4SW1/4, Section 3, T13N-R03E. This has always been the main Rock Creek diversion according to Mr. Allen (#3 on map).*
- *Diversion location listed under SRBA decreed Water right #65-3111X was found abandoned in NW1/4SE1/4, Section 3, T13N-R03E. Mr. Allen indicated this location was abandoned due to residential development (#1 on map).*
- *Current diversion location on lower Rock Creek for the ranch south acreage SE1/4NE1/4, Section 3, T13N-R03E (#4 on map).*

Actions

In order for the Allen water right #65-3111X to reflect the point(s) of diversion currently in use, a transfer application must be filed and processed by our agency. The process criteria and procedure is outlined in Idaho Code Sections 42-108 and 42-222, copies enclosed. Our agency is generally required to publish notice of a proposed change as part of the transfer process. You will be notified by letter when the notice is published, and given an opportunity to submit comments or protest the changes. It normally takes a few months to process a noncontested transfer application, or more if the application is protested.

Water right #65-3111X only authorizes the diversion of water for irrigation from April 15 thru October 15 annually. If Mr. Allen desires to divert water for some other beneficial use outside the irrigation season, he would need to file an "Application for Permit" for a new appropriation of water. The new appropriation process is outlined under Idaho Code Sections 42-202 and 42-203A copies enclosed. This process also includes public notice of which you would be notified.

I understand Mr. Allen is already working with our Western Region office staff to facilitate the transfer process. Our agency will also be contacting sister water right holders (#65-3111A & #65-3111F) to confirm their point of diversion locations. We will continue to keep you apprised of filings and correspondence.

Should you have questions or concerns please contact me at 208-287-4948.

Sincerely,



Jeff Peppersack,
Chief, Water Allocation Bureau

Enclosures: PRBA map, SRBA review notes, GPS location map and referenced Idaho Code

cc: JR Allen
Bruce Smith - attorney
John Westra, IDWR Western Region