



State of Idaho

DEPARTMENT OF WATER RESOURCES

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June 16, 2011

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Jim Bunce
West Mountain Water Association, Inc.
PO Box 388
Cascade, ID 83611

Re: Water Right Transfer 77209 and Water Diversions from Rock Creek

Dear Mr. Bunce:

This letter is a follow up to our meeting in Boise on Tuesday May 3, 2011, regarding the transfer filing in the name of West Mountain Water Association, Inc. ("the Association") and your concerns about water diversions from Rock Creek (aka Richard Creek). I appreciated meeting with you and your wife, Isabel, and Jerry Dye to discuss these matters.

I hope our meeting was helpful to you in answering questions regarding the initial data entry of the Association's transfer application. As I indicated in our meeting, the Department will correspond with you when the application is advertised so that you may verify the information on the Department website in addition to the legal notice in the McCall newspaper.

In our meeting, and in prior discussions with me and Department staff, you have raised concerns about water diversions from Rock Creek and flooding problems experienced by some members of the Association resulting from an unmaintained irrigation ditch. As we discussed, the Department does not have jurisdiction to enforce laws associated with ditch easements and maintenance issues and liability for property damages associated with flooding. I suggested a starting point would be to research county records for recorded easements.

The Association's transfer 77209 seeks to correct the record for the Association's water right no. 65-3111A to describe the historic point of diversion used by the Association. The historic point of diversion is located upstream of West Mountain Road and is described correctly under the Association's other water right no. 65-13088. You specifically asked if the Association will be allowed to continue diverting water under water right no. 65-3111A at the historic location while transfer 77209 is being processed.

You also asked what the Department intends to do about another water user's diversion of water from Rock Creek at a point located just upstream of the Association's historic diversion point. As you know, Allen Ranch LLLP ("Allen Ranch") has filed a transfer application to add that point of diversion ("the Allen Ranch upper diversion") to its water right no. 65-3111X. I understand that Allen Ranch claims that the location is a historic point of diversion and ditch

used under water right no. 65-3111X. Department staff visited the site last November in response to a separate complaint and observed that the ditch has been in place for many years, but could not confirm how long it has been actively used.

I am reluctant to prohibit the Association, while its transfer application is pending, from diverting water for domestic purposes at its historic location in this circumstance. The diversion is not a new diversion and the discrepancy from the recorded water right (65-3111A) appears to be the result of an error when the right was described in the Payette and Snake River Basin adjudications.

Regarding the Allen Ranch upper diversion, it is not clear to me when the diversion and ditch originated, but I will assume it is not a new diversion and ditch and may also be the result of an error in description. Allen Ranch may continue diverting from its upper diversion under water right no. 65-3111X while the Allen Ranch transfer application is pending; however, Allen Ranch must ensure a sufficient amount of water will pass downstream in Rock Creek to satisfy the Association's water right at its historic point of diversion.

I hope this letter sufficiently addresses your questions. Please contact me if you have additional questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Gary Spackman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gary Spackman
Interim Director

cc: Western Region, IDWR
Bruce Smith – Attorney for Allen Ranch
Stephen Goodson – Governor's Office