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RECEIVED

AUG 29 2005

Idaho Department of Water Resources  
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August 26, 2005

**Via Email & U.S. Mail**

Mr. Chris Bromley  
Deputy Attorney General  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83270

**Re: Information on Season of Use for Birch Creek Claims (Basin 45)**

Dear Chris:

Please find enclosed the following documents regarding evidence of "early season" water from Birch Creek:

- 1) Statement of Barry Matthews
- 2) Statement of Jerry Stanger
- 3) Statement of Dutch Robinson
- 4) Statement of Tim Payton
- 5) Letter from Kales Lowe to Birch Creek Water Users (March 4, 1957)
- 6) Minutes of Oakley Canal Company (March 6, 1957)

Please include the above materials with your review of those already provided at the meeting on June 22, 2005. As discussed earlier this month, it is my understanding the Department will review the evidence regarding the "season of use" on Birch Creek for purposes of resolving an acceptable date that could be included in a Standard Form 5 ("SF5"). In addition to the "season of use" issue, we also need to discuss the Point of Diversion and a remark for the Water Rotation Agreement. I would expect all of these issues could be handled through the SF5s for the claims.

If you have any questions, or if the Department determines that another meeting with the parties is necessary, please contact me at 733-0700. I look forward to hearing from you soon.

Chris Bromley / IDWR  
August 26, 2005  
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Sincerely,

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in dark ink, appearing to read 'T. L. Thompson', with a long horizontal flourish extending to the right.

Travis L. Thompson

Enc.

cc: Jeannie Robertson, Southern Region IDWR  
Tim Payton, c/o Birch Creek Water Users

TO WHOM IT MAY CONCERN:

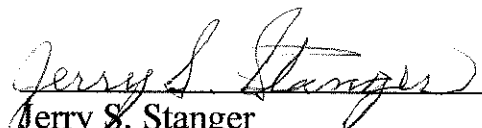
I, BARRY R. MATTHEWS, residing at <sup>BRM 433</sup>~~440~~ W. 1900 S., Oakley, Idaho, being previously employed by Ennis Matthews, doing business as Matthews Brothers, do remember running irrigation water from Birch Creek for the irrigation of alfalfa from early spring run off.

Barry R. Matthews  
Barry R. Matthews

Date: 8/7/05

TO WHOM IT MAY CONCERN:

I, JERRY S. STANGER, of 70 years of age, residing at 1777 S. 400 W, Oakley, Idaho, was employed as the Water Master for the Oakley Canal Company, from 1970 to 1977. I can confirm that Birch Creek water was used for irrigation beginning in late February, early March during early spring run off.

  
Jerry S. Stanger

Date: 8-8-05

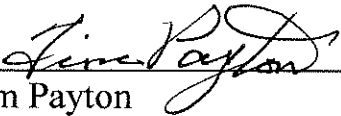
| PAGE NUMBER | DATE        | STATION             |
|-------------|-------------|---------------------|
|             | 8 / 25 / 05 | Birch Creek Water 1 |
|             |             |                     |

It was in late Jan. of 1999 I was helping  
 feed cows on the Henry Calahan Ranch here in  
 Oakley with Chuck Payton after the cows were  
 feed we went to the South field where we  
 change the water set on the way, using Dams  
~~that~~ + cut outs on the ditch,

8/25/05 H. Dutch Robinson

TO WHOM IT MAY CONCERN:

I, Tim Payton, residing at 478 W. 1900 S., Oakley, Idaho, while being employed by H. C. Matthews, did use Birch Creek water for the irrigation of alfalfa in the early spring from the early run off.

  
\_\_\_\_\_  
Tim Payton

Date: 8-26-05

T. H. CHURCH  
ASSOCIATE

S. T. LOWE  
AND  
KALES E. LOWE  
ATTORNEYS AND COUNSELLORS AT LAW  
BURLEY, IDAHO

March 4, 1957

Water Users  
Water District No. 10B  
Birch Creek  
Cassia County, Idaho

Gentlemen:

Under the decree made and entered in the District Court of the Fourth Judicial District of the State of Idaho, in and for Cassia County, in the case entitled Jacob Dayley and others, plaintiffs, vs. Heber C. Dayley and others, defendants, by Honorable Lyttleton Price, Judge, on the 16th day of October, 1903, rights to the use of the waters of Birch Creek were adjudicated without specification as to the dates of use. In another matter, the office of the Department of Reclamation of the State of Idaho has heretofore obtained from the Attorney General of the State of Idaho an opinion wherein it was advised that in Idaho the irrigation season commences on the 1st day of April of each year and continues through the 31st day of October of each year. Under date of March 1, 1957, the Oakley Canal Company received from Honorable Mark R. Kulp, State Reclamation Engineer of the State of Idaho by Roy W. Thompson, office manager, a letter, wherein it is stated, among other things:

"The Oakley Canal Company has a License No. 3104 to the amount of 100 cubic feet per second, with priority of March 10, 1909, for the waters from Birch Creek \* \* \*. Under these Licenses the Oakley Canal Company has the right to the use of water from both of these creeks up to April first (1st), or the beginning of the irrigation season--after which said water has to be delivered according to priority as stated in the decree.

"Since there is no irrigation period stated in the decree, we maintain that the irrigation season commences on April 1st, and closes on November 1st of each year. \* \* \*"

Water Users  
Water District No. 10B  
Birch Creek

-2-

March 4, 1957

This is to advise you that the Oakley Canal Company does hereby insist that all water now or hereafter flowing in Birch Creek before the 1st day of April, 1957, and after the 31st day of October, 1957, and during the period from November 1st to April 1st of each year thereafter be delivered to it for storage in the Oakley Reservoir.

Very truly yours,

OAKLEY CANAL COMPANY

BY S. T. LOWE & KALES E. LOWE

By Kales E. Lowe  
Attorneys for Oakley Canal  
Company, residing at Burley,  
Idaho.

KEL/mh

*See Minutes of Mar. 6-1957*

SPECIAL MEETING OF BOARD OF DIRECTORS  
OF THE OAKLEY CANAL COMPANY  
MARCH 6, 1957.

A special meeting of the Board of Directors of the Oakley Canal Company was held at the office of the company, March 6th, 1957, at the hour of one o'clock P.M.

All directors were present.

An emergency existing, the meeting was called for the purpose of discussing water rights of the Oakley Canal Company under Water District No. 10-B, Birch Creek.

The Birch Creek Decree was read by Director Whiteley.

It was explained that many Oakley Canal Company waterusers were of the opinion that the early water from Birch Creek should be run to the Oakley Reservoir for storage. Not being able to locate a copy of the decree or to find out definitely what waters from Birch Creek the company was legally entitled to the watermaster had had a letter written to the State Superintendant of Water Distribution asking for a copy of this decree and an opinion on the matter. On March 1, 1957, Mr. Roy W. Thompson wrote a letter, for Mark R. Kulp, State Reclamation Engineer, stating that the Oakley Canal Company has a License No. 3104 for 100 cubic feet per second, with a priority of March 10, 1909, for the waters from Birch Creek, and that under this license of the Oakley Canal Company has the right to the use of the waters from Birch Creek up to April 1st, or the beginning of the irrigation season; after which date said water is to be delivered according to priority as stated in the decree. He further stated that since there is no irrigation period stated in the decree the Reclamation Department maintained that the irrigation season, in the State of Idaho, commences on April 1st and closes on November 1st of each year. Attorney Lowe was present to give legal opinion on the matter. He stated that he was of the opinion that the users of Birch Creek were entitled to the water so long as it was put to beneficial use. He also reported that there was an identical case now in process, in Cassia County, and that the outcome should give the Oakley Canal Company a partial answer as to whether they could take the Birch Creek stream for storage, except during the irrigation season. After considerable discussion a motion was made by Eugene Pickett, seconded by Ray Anderson that before taking any definite action the company should await the outcome of the case of Anderson versus Dewey. The attorney agreed to check the facts of this case further to make sure that it is identical to that of Water Dist. No.-10-B, Birch Creek and the Oakley Canal Company. If the cases are identical the watermaster is instructed to have Attorney Lowe write a letter to the Birch Creek Chairman advising him that all action would be set aside until some future date. Motion carried.

After some discussion on trying to get supplemental waters from Snake River, for the Oakley Project, Attorney Lowe advised that it may be possible to get water through 'The Small Reclamation Projects Act of 1956'. After the matter was explained and discussed a motion was made by W. B. Whiteley, seconded by Ray Anderson, That Mr. Lowe write a letter to the proper sources to make it a matter of record that the Oakley Canal Company is interested in applying for supplemental irrigation waters from Snake River.. Motion carried.