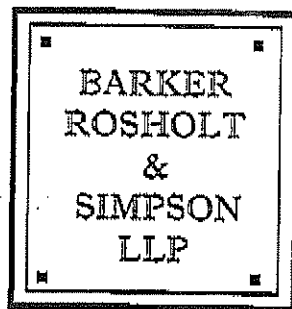


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November 10, 2005

Via Facsimile & U.S. Mail: (208) 878-0146

Mr. William A. Parsons
Parsons Smith & Stone LLP
137 W. 13th St.
P.O. Box 910
Burley, Idaho 83318

Re: Birch Creek Water Users Assn. / Oakley Canal Company Birch Creek Water
Right Claims in the Snake River Basin Adjudication (SRBA)

Dear Bill:

This letter concerns the meeting held today between representatives of the Oakley Canal Company ("Canal Company") and Tim and Chuck Payton on behalf of the Birch Creek Water Users Association¹ ("Association"). I thank you for taking the time to meet with us and clarify the concerns raised over the Department's proposed language concerning the Canal Company's and the Association's water rights out of Birch Creek.

For purposes of the Canal Company's consideration of this matter at its November board meeting (11/15), here is an outline of what I understand to be the resolution of the matter:

- 1) The Association agrees to have its season of use for all of its Birch Creek claims decreed as follows: 2/28 to 11/15
- 2) The Canal Company will not object to this season of use (as will be reflected in the amended Director's Report for the Association's Birch Creek claims).
- 3) The Association will withdraw its objection to the Canal Company's Birch Creek water right claim (45-2063).

¹ All claims filed in the SRBA are in the names of the individual landowners. The Association has no claims filed in its name.

Bill Parsons
November 10, 2005
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- 4) The Association, as will be reflected on its water right decrees issued by the SRBA Court, will be able to divert 947 inches (total daily diversion rate) from February 28th to November 15th. These water rights will have various 1875, 1881, and 1882 priority dates (see enclosed *Dayley* decree).
- 5) The Canal Company, as will be reflected on its water right decree issued by the SRBA Court, will be able to divert to 5,000 inches (total daily diversion rate) for its year round storage and irrigation use with a 1909 priority date (see enclosed copy of recommendation for water right 45-2063).

In other words, the Association will continue to be able to divert and use water early in the irrigation season consistent with historical practice. Likewise, the Canal Company will still be able to continue to divert its water right year-round, and in priority with the Association's between February 28th and November 15th of each year. The following example illustrates how I understand the water rights would be administered:

November 15th to February 28th, the Canal Company has the right divert up to 5,000 inches from Birch Creek to the Goose Creek Reservoir for irrigation storage (depending on the capability of the Company to divert the water from Birch Creek to the reservoir). On February 28th the Birch Creek flows are 3,000 inches, the Association has the first right to divert 947 inches and the Company then has the second right to divert the remaining 2,053 inches.

Special Master Dolan has scheduled a status conference for the Association's Birch Creek claims on November 17, 2005 at 10:00 a.m. I would like to be able to advise the Court that we have reached an agreement with the Canal Company on this matter if possible. Please advise me on the Canal Company's position after they have considered the above proposal at their November board meeting. Also, feel free to call me if you have any questions or other concerns.

Thanks again for meeting with us to discuss this matter. Given the history of the water use by the Association and Canal Company from Birch Creek I am confident that same level of cooperation will continue in the future.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

Enc.

cc: Tim Payton (President - Birch Creek Water Users Assn.)

SECOND DIVISION

JAMES McMILLAN, COMMISSIONER

TWIN FALLS, IDAHO

1910

Decreed Water RightsBirch Creek, Cassia County

IN THE DISTRICT COURT OF THE
FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHOIN AND FOR
CASSIA COUNTY

*Jacob Dayley, B. R. Dayley, L. A.
Nelson, Jas. Worthington, Geo.
Craner, Wm. R. Lee, Louisa Haight,
J. J. Millard, H. R. Matthews, Mar-
tha Matthews, and Elissa Critch-
field,*

} Plaintiffs

vs.

Heber C. Dayley, Timothy Matthews, James Lyman, John McMurray, T. B. West, James Walker, Thos. Birch and Nephi Birch, } Defendants

DECREE.

This cause having been regularly called, and the defendant, Heber C. Dayley, having filed his disclaimer herein, and the default of the defendants, Timothy Matthews, James Lyman, Jos. McMurray, James Walker, Thomas Birch and Nephi Birch, for failure to appear and answer, having been duly entered, and all the parties hereto not in default or having disclaimed, having agreed upon a statement of facts herein, and the Court having made its findings of fact and conclusions of law:

IT IS NOW ORDERED, ADJUDGED AND DECREED that the following parties are entitled to divert from Birch Creek the amount of water herein indicated, and the right of each party dates from the time hereinafter stated and set opposite each name, to-wit:

Jacob Dayley.....	80 inches from Mar.	1st, 1875
Jacob Dayley.....	30 inches from Apr.	1st, 1881
Jacob Dayley.....	50 inches from Dec.	5th, 1882
E. R. Dayley.....	80 inches from Mar.	1st, 1875
E. R. Dayley.....	30 inches from Apr.	1st, 1881
E. R. Dayley.....	50 inches from Dec.	5th, 1882
L. A. Nelson.....	48 inches from Apr.	1st, 1881
James Worthington....	48 inches from Apr.	1st, 1881
Geo. Oraner	70 inches from Apr.	16th, 1882
Wm. B. Lee	48 inches from Apr.	1st, 1881
Louisa Haight	48 inches from Apr.	1st, 1881
Jno. J. Millard	75 inches from Apr.	15th, 1882
H. B. Matthews	40 inches from June	1st, 1882
Martha Matthews	50 inches from Dec.	1st, 1882

T. B. West, all the waters of that certain Spring known as Cold Springs, being a tributary to Birch Creek.
Orrissa Critchfield, two-thirds of all the waters of Critchfield Springs by her placed in said Birch Creek, not exceeding in amount 200 inches.

3

It is further ordered, adjudged and decreed that the plaintiff, Jacob Dayley, upon demand being made therefor, shall deed by good and sufficient conveyance, properly signed and acknowledged, such interest in the water rights and the right to the use of the waters of Birch Creek herein decreed to him, to the parties to whom he has heretofore, and prior to the commencement of this action, agreed to sell and sold and disposed of certain parts and portions of the lands owned and possessed by him and described in the complaint herein, and certain proportionate interests in the water rights and the right to the use of the water of said Birch Creek appurtenant to said land; such interests so conveyed to each of said persons to be of such a proportionate amount of said water right and the right to the use of water decreed to him as the land bought or agreed to be bought by each of said persons bears to the whole of said lands described in the complaint herein as belonging to said plaintiff.

It is further ordered, adjudged and decreed that the plaintiff, E. R. Dayley, upon demand being made therefor, shall deed by good and sufficient conveyance, properly signed and acknowledged, such interest in the water rights and the right to the use of the waters of Birch Creek herein decreed to him, to the parties to whom he has heretofore, and prior to the commencement of this action, agreed to sell and sold and disposed of certain parts and portions of the lands owned and possessed by him and described in the complaint herein, and certain proportionate interests in the water rights and the right to the use of water of said Birch Creek appurtenant to said land; such interests so conveyed to each of said persons to be such a proportionate amount of said water right and the right to the use of the water decreed to him as the land bought or agreed to be bought by each of said persons bears to the whole of said lands described in the complaint herein as belonging to said plaintiff.

It is further adjudged and decreed that the several quantities of water herein decreed shall be the quantities hereinbefore named, measured at the point of diversion thereof, under a four-inch pressure, and that the first appropriator in point of time is first in right.

4

It is further ordered, adjudged and decreed that in case of an insufficiency of water to supply all the parties hereto, to whom water is decreed, the entire volume of the water of said stream is to be divided to and be used by those appropriators who are first in point of time, except the water from said Cold Springs, decreed to defendant, T. E. West, and the two-thirds (2/3) of the waters of Critchfield Springs decreed to the plaintiff, Orissa Critchfield.

It is further ordered, adjudged and decreed that each and all of the parties to this action, and their successors and assigns, and each and every of them, are hereby perpetually enjoined from diverting or interfering with any of the waters of said Birch Creek, except in the quantity and in the order and manner in which they and each of them are herein decreed to be entitled thereto.

It is further ordered, adjudged and decreed that each of the parties herein shall pay all the costs by him or her incurred without recourse upon any of the other parties hereto.

(Signed)

LYTTLETON PRICE, *Judge.*

Filed in open Court this 10th day of October, 1903. Recorded Nov. 30, 1903.

JOS. Y. HAIGHT, *Clerk.*

STATE OF IDAHO, }
County of Cassia, } ss.

I, Joseph Y. Haight, Clerk of the District Court of the Fourth Judicial District of Idaho, in and for the County of Cassia, do hereby certify that the foregoing three sheets of typewritten matter is a full, true and correct copy of the decree in an action entitled Jacob Dayley, et al., vs. Heber C. Dayley, et al., the original of which is now on file in my office.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said Court, at Albion, Idaho, this 26th day of May, 1910.

(Seal)

JOS. Y. HAIGHT,

Clerk of the District Court of the Fourth Judicial District of Idaho, in and for Cassia County.

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IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 45-2063 V1

WATER RIGHT NUMBER: 45-2063 V1

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	SAMUEL H HAYS 15 PINEVIEW AVE DELMAR, NY 12054
Original Owner	TWIN FALLS OAKLEY LAND & WATER CO OAKLEY, ID 83348

Priority Date: 03/10/1909

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
BIRCH CREEK	SINKS

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION STORAGE	01/01	12/31		74,350.00 AF
IRRIGATION FROM STORAGE	03/15	11/15		74,350.00 AF
IRRIGATION	03/15	11/15	100.000 CFS	
	<u>Total Diversion:</u>		100.000 CFS	74,350.00 AF

Location of Point(s) of Diversion

BIRCH CREEK	SE1/4SW1/4NW1/4	Sec. 24, Twp 14S, Rge 22E, B.M.
CASSIA County		

Place of UseConditions of Approval:

1. 129 Place of use is within the area served by Oakley Canal Company.
2. 135 The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-2025(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.
3. C03 RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
4. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree, Section 42-1412(6), Idaho Code.

Remarks:

1. Place of Use - Irrigation USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 27,550 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 45-93, 45-94, 45-132, 45-133, 45-2040, 45-2059, 45-2060, 45-2062, 45-2063, 45-12438, 45-12443, 45-12449, 45-12455, 45-12749, 45-12750.

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IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 45-2053 V1

2. Place of Use - Irrigation THIS RIGHT IS LIMITED TO THE IRRIGATION OF 24,974 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

Comments:

1. THORNTON 1/8/1993 COPIED FROM REMARKS

Comment: P/D IN NW 1/4, SEC. 11, T14S, R22E, P/U SAME AS RT, 45-2059, ***** THIS RT
COMBINED WITH 45-02059, 02060, AND 02062 AND CLAIMED AS A45-12242. HHT 1/8/93

2. vhancock 7/22/2004 RECOMMENDATION

Comment: BASED UPON LICENSE.

3. vhancock 7/22/2004 QUANT

Comment: RESEVOIR CAPACITY OF 74350 AF BASED UPON 1980 REPORT.