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June 15, 2007

Monica P. Van Bussum
Idaho Dept. of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Manning -- Claim No. 45-14027

Dear Ms. Vanbussum:

I have reviewed your letter of May 29, 2007 with Robert Manning. Perhaps you can offer us some guidance on this. Mr. Manning's claim is based upon the flow in the Birch Creek channel. Birch Creek channel enters his property and travels through pasture ground for about $\frac{3}{4}$ of a mile to a diversion for Oakley Canal Company. This diversion delivers water into the canal in excess of the Birch Creek Water Users Association rights when it is available. Most of the time during the winter months, the canal is not usable because of freezing and flooding risks. The Birch Creek channel continues through the Manning property beyond the diversion for an additional $1\frac{3}{4}$ miles where the channel has been permanently dammed off. It has been dammed off for more than 100 years for two reasons. One reason is that, in the early days, the channel would continue on into Oakley and cause flooding concerns. Now, if water were allowed to run down the channel, it would eventually empty into Oakley Canal Company canals in a fashion that would be detrimental to their management of water. At the time the dams were put in place, a diversion was built so that the water that is running down Birch Creek continues through the Manning pastures and on into third-party pastures until seepage has taken care of the flow.

Livestock has been watered along the Birch Creek channel and the final diversion since approximately 1875. Historically, Manning Ranches, Inc., and its predecessor Matthews Brothers, Inc., have wintered between 600 and 800 head of mother cows with their calves in the pastures along Birch Creek and the final diversion. The water consumption of the cattle during the winter would be within the 13,000 gallon per day de minimus limitation. On the other hand, in order to move water through the Birch Creek channel and to the ultimate diversion requires approximately 9 cfs.

During most of the non-irrigation season, flow is not an issue because there is no place else for the water to go. The Oakley Canal Company canal is frozen and the permanent dam on Birch Creek forces the water through the system described above. On occasion, the Oakley Canal Company canal is open. Historically it has diverted water when able in excess of the 9 cfs required to push water to allow stockwatering by the downstream users.

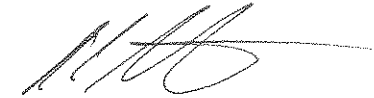
With this background, perhaps you could give us some guidance as to how we should best proceed.

In terms of proof of priority, Manning Ranches has established significant surface water rights on Birch Creek for irrigation purposes dating back to when the ranch was first developed as a livestock operation in 1875. Unfortunately, there was an adjudication just prior to the SRBA which was silent as to stockwater rights. IDWR took the position that they were bound by the adjudication and recommended that a subsequent stockwater claim be filed. The claim that we filed was in accordance with their recommendation.

I would appreciate whatever guidance you can provide.

Sincerely,

PARSONS, SMITH & STONE, LLP

A handwritten signature in black ink, appearing to be 'R.C. Stone', with a long horizontal flourish extending to the right.

R.C. Stone

RCS/lmh