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September 17, 2008

RECEIVED

SEP 19 2008

DEPARTMENT OF
WATER RESOURCES

Craig Saxton
Water Rights Supervisor
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

Re: Late Notice of Claim to Water Right No. 25-14228.

Dear Craig:

This letter is in response to your letter dated August 27, 2008. We appreciate the information you provided to us in the letter. In particular, we appreciate the information that diversion to storage is not typically recommended as a valid use for on-stream storage. We had previously been told otherwise, but are happy to amend our claim to remove this component of the water right.

You note in your letter that it may be necessary to file an Amended Notice of Claim with the SRBA Court. However, because this claim is still subject to a Late Notice of Claim hearing set for November 18, 2008, at 1:30, we believe that we would simply need to substitute the first page of the claim attached to the Motion to File Late of Claim to amend our claim as you have suggested in your letter. As a result, enclosed with this letter is a copy of a letter we have provided to the clerk of the SRBA Court asking them to substitute the first page of the attached claim. We have enclosed a copy of this letter and a copy of the revised first page for your review and information. If you have any questions or concerns, please let us know.

Best Regards,

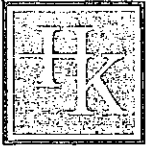
Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

c: Birch Creek Corp.

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Established in 1896



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September 17, 2008

COPY

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

RE: Amended First Page for Notice of Claim to Water Right No. 25-14228.

Dear Clerk:

Enclosed is an amended first page of a Notice of Claim attached to a Motion to File Late Notice of Claim for Water Right No. 25-14228. It was brought to our attention by an adjudication bureau individual from IDWR that there was no need to include a diversion to storage component to our claim as the water right is for a storage right for an on-stream pond. Accordingly, we have removed the diversion to storage component of our claim, and it now only reflects that the claim is for the storage of 26 acre feet.

This water right is currently scheduled for a hearing on November 18, 2008, at 1:30 p.m. as a Motion to File Late Notice of Claim. Therefore, it does not appear necessary to file an Amended Notice of Claim as the question of whether or not our late notice will be granted in the first place. Accordingly, could you please substitute this amended first page with the first page we originally attached to our late notice of claim, which was filed on August 13, 2008. If you have any questions or concerns, please give me a call at 208-523-0620. We appreciate your kind attention to this matter.

Best Regards,

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosure

c: Birch Creek Corp.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 25-14228

Date Received _____

Receipt Number _____

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

COPY

1. Name of Claimant(s) Birch Creek Corp. Phone (303) 862-8973
Mailing Address PO Box 20745, Boulder, CO Zip 80308
2. Date of Priority (Only (1) per claim) June 13, 1960
3. Source of water supply (a) Unnamed Stream
which is tributary to (b) Birch Creek
- 4.a. Location of existing point of diversion is:
Township 2N Range 41E Section 10, NW 1/4 of SW 1/4 of NE 1/4, Govt. Lot _____,
County of Bonneville
Additional points of diversion if any: _____
If Available, GPS Coordinates: _____
- b. If instream flow, beginning point of claimed instream flow is:
Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____ B.M., County of _____
ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4 Govt. Lot _____ B.M., County of _____
5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged
and the depth of each well. Dam in stream channel with two outlets into channels below dam. Dam is approximately
21.5 feet high and 250 feet across. The dam crest is 7 feet wide.
6. Water is claimed for the following purposes: (Both dates are inclusive) (cfs) (acre feet)
For Aesthetic Storage purposes from 01/01 to 12/31 amount _____ or 26 afa
For Recreation Storage purposes from 01/01 to 12/31 amount _____ or 26 afa
For Wildlife Storage purposes from 01/01 to 12/31 amount _____ or 26 afa
7. Total quantity claimed (a) _____ (cfs) and/or (b) 26 (acre feet)