

01/22/2003

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-13103

NAME AND ADDRESS: MALAD VALLEY IRRIGATION CO
C/O GRANT JONES
2601 W 500 S
MALAD CITY ID 83252

SOURCE: BIRCH CREEK

TRIBUTARY: DEVIL CREEK

QUANTITY: 6.200 CFS
4,464.000 AFY

THE AMOUNT OF WATER DIVERTED UNDER THIS WATER RIGHT MAY NOT EXCEED
A TOTAL OF THREE-QUARTERS OF THE NATURAL FLOW OF BIRCH CREEK
MEASURED AT THE POINTS OF DIVERSION DESCRIBED BELOW AT ANY GIVEN
TIME.

PRIORITY DATE: 10/10/1878

POINT OF DIVERSION:

T12S R36E S27 SWNWSW Within ONEIDA County

T12S R36E S27 SENWSW Within ONEIDA County

T12S R36E S27 SENWSW Injection Within ONEIDA County

T13S R36E S13 SWNW Rediversion Within ONEIDA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION FROM STORAGE	04/01 10/31	4,464.00 AFY
IRRIGATION	04/01 10/31	6.200 CFS
IRRIGATION STORAGE	01/01 12/31	4,464.00 AFY
DIVERSION TO STORAGE	01/01 12/31	6.200 CFS

PLACE OF USE:

8683 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 2232 ACRES WITHIN THE
AREA SERVED BY MALAD VALLEY IRRIGATION COMPANY IN A SINGLE
IRRIGATION SEASON.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: Decreed

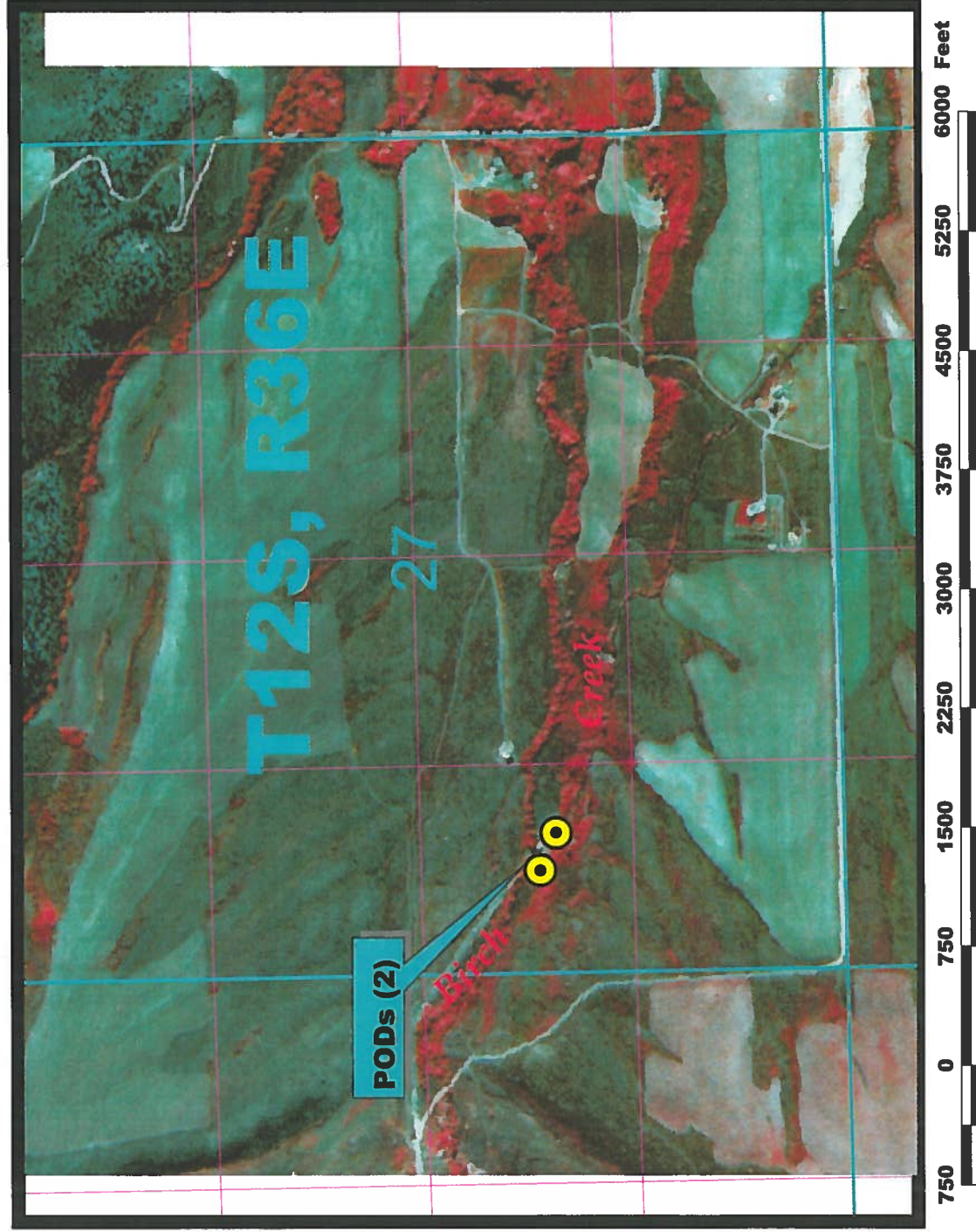
RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT
TO SECTION 42-1425, IDAHO CODE.



State of Idaho

Department of Water Resources

Eastern Region



Water Right(s):

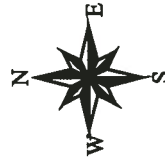
29-13103

Points of Diversion only

Place of Use: (parts of) T13S, R36E;
T14S, R36E; T15S, R36E
Canal Co. Large Place of Use.

Point(s) of Diversion: TWO POD's @
T12S, R36E Sec. 27 NWSW (Birch Ck)

**Note: Delivery to Devil Creek
Reservoir through Devil Creek.**



LEGEND

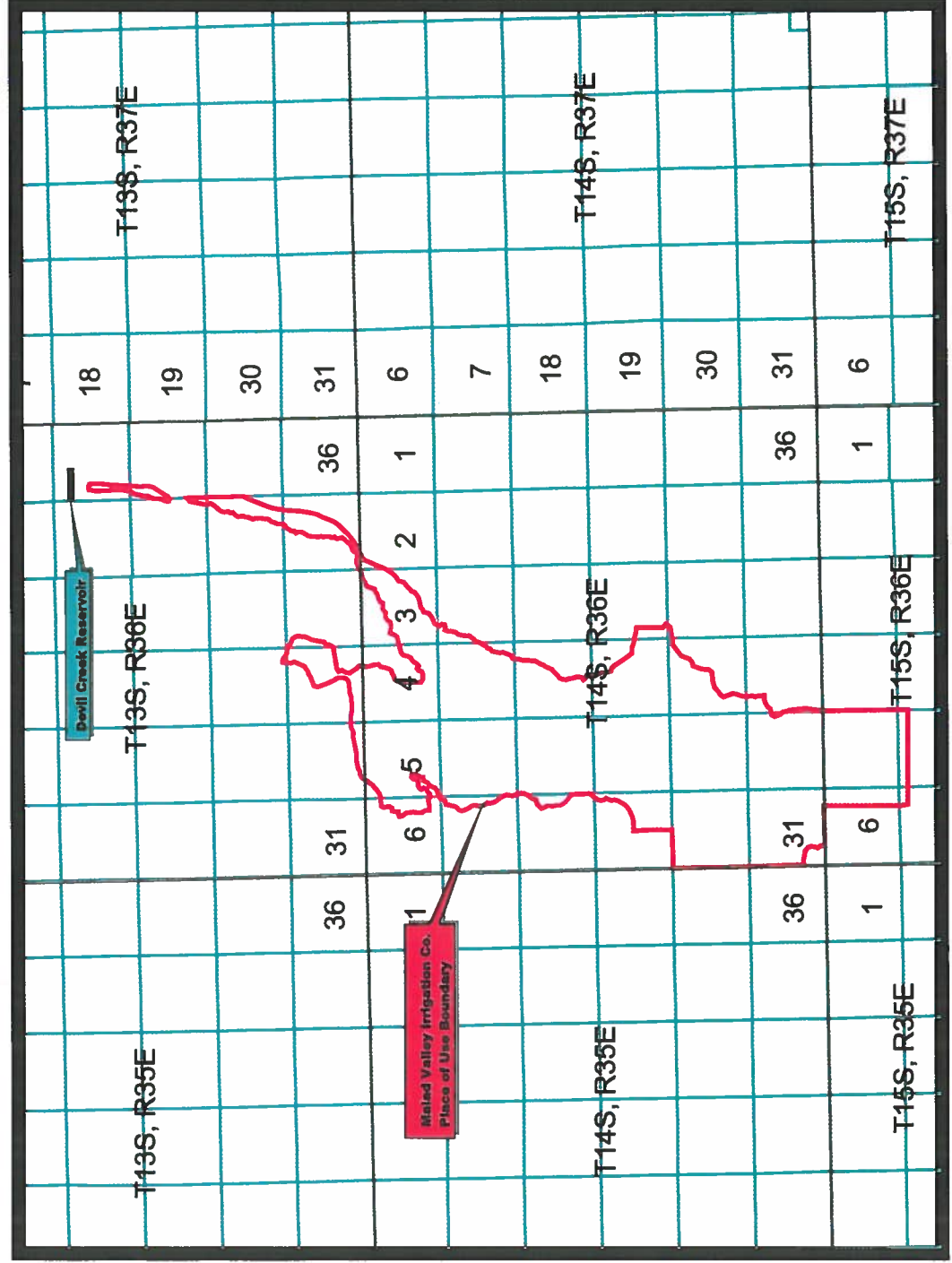
- Point of Diversion
- SESE Place of Use
- Section
- Quarter-Quarter



State of Idaho

Department of Water Resources

Eastern Region



Water Right(s):

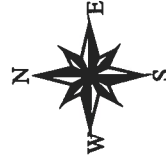
29-13103

Place of Use Boundary only

Place of Use: (parts of) T13S, R36E;
T14S, R36E; T15S, R36E
Canal Co. Large Place of Use.

Point(s) of Diversion: TWO POD's @
T12S, R36E Sec. 27 NWSW (Birch Ck)

Note: Delivery to Devil Creek
Reservoir through Devil Creek.



LEGEND



Point of Diversion



SESE Place of Use



Section



Quarter-Quarter

5280 0 5280 10560 15840 21120 26400 31680 36960 42240 47520 52800 58080 63360 68640 Feet

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: **A29-13103**
Date Received: 1/14/1999
Receipt No: E024726
Received By: SV

15-2081

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name: MALAD VALLEY IRRIGATION CO 208-766-2221
Address: C/O GRANT JONES
2601 W 500 S
MALAD ID 83252

2. Date of Priority: OCT 10, 1878

3. Source: BIRCH CREEK Trib. to: DEVIL CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot
12S	36E	27	SW	NE	SE	

County
ONEIDA

5. Description of diverting works:
2 CEMENT DIVERSION DAMS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
DIVERSION TO STORAGE	01/01	12/31	6.200		
IRRIGATION STORAGE	01/01	12/31			4464.00
IRRIGATION FROM STORAGE	04/01	11/01			4464.00

7. Total Quantity Appropriated is:
6.200 C.F.S. (and/or) 4464.00 A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
13S	36E	13	NW	SW		IRR	20.0
			SW	SW		IRR	20.0

A2913103



10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
						Section Acres	40.0
		23	NE	SE		IRR	5.0
			SE	SE		IRR	15.0
						Section Acres	20.0
		24	NW	NW		IRR	20.0
			SW	NW		IRR	10.0
						Section Acres	30.0
		25	NW	NW		IRR	15.0
			SW	NW		IRR	30.0
			NW	SW		IRR	5.0
						Section Acres	50.0
		26	NE	NE		IRR	35.0
			NW	NE		IRR	10.0
			SW	NE		IRR	15.0
			SE	NE		IRR	30.0
			NE	SE		IRR	25.0
			NW	SE		IRR	25.0
			SW	SE		IRR	30.0
			SE	SE		IRR	10.0
						Section Acres	180.0
14S	35E	24	SE	SE		IRR	39.0
						Section Acres	39.0
		25	NE	NE		IRR	39.0
			SW	NE		IRR	39.0
			SE	NE		IRR	39.0
			NE	SE		IRR	38.0
			NW	SE		IRR	39.0
			SW	SE		IRR	39.0
			SE	SE		IRR	39.0
						Section Acres	272.0
		36	NE	NE		IRR	40.0
			NW	NE		IRR	35.0
			SE	NE		IRR	39.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
						Section Acres	114.0
	36E	2	NW	NW		IRR	15.0
						Section Acres	15.0
		3	NE	NE		IRR	30.0
			NW	NE		IRR	30.0
			SW	NE		IRR	36.0
			SE	NE		IRR	25.0
			NE	NW		IRR	10.0
			NW	NW		IRR	10.0
			SW	NW		IRR	30.0
			SE	NW		IRR	35.0
			NE	SW		IRR	35.0
			NW	SW		IRR	40.0
			SW	SW		IRR	38.0
			SE	SW		IRR	10.0
			NW	SE		IRR	10.0
						Section Acres	339.0
		4	NE	NE		IRR	10.0
			NW	NE		IRR	30.0
			SW	NE		IRR	39.0
			SE	NE		IRR	30.0
			NE	NW		IRR	35.0
			NW	NW		IRR	35.0
			SW	NW		IRR	38.0
			SE	NW		IRR	35.0
			NE	SW		IRR	40.0
			NW	SW		IRR	25.0
			SW	SW		IRR	20.0
			SE	SW		IRR	30.0
			NE	SE		IRR	38.0
			NW	SE		IRR	35.0
			SW	SE		IRR	39.0
			SE	SE		IRR	39.0
						Section Acres	518.0
		5	NE	NE		IRR	35.0
			NW	NE		IRR	30.0
			SW	NE		IRR	35.0
			SE	NE		IRR	38.0
			NE	NW		IRR	30.0

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
14S	36E	5	NW		NW		IRR	30.0
			SW		NW		IRR	38.0
			SE		NW		IRR	38.0
			NE		SW		IRR	35.0
			NW		SW		IRR	30.0
			SE		SW		IRR	38.0
			NE		SE		IRR	38.0
			NW		SE		IRR	35.0
			SW		SE		IRR	36.0
			SE		SE		IRR	40.0
							Section Acres	526.0
		6	SW		NE		IRR	40.0
			SE		NE		IRR	39.0
			NE		SE		IRR	35.0
			NW		SE		IRR	40.0
			SW		SE		IRR	35.0
							Section Acres	189.0
		8	NE		NE		IRR	30.0
			NW		NE		IRR	40.0
			SW		NE		IRR	20.0
			SE		NE		IRR	33.0
			NE		NW		IRR	40.0
			SE		NW		IRR	10.0
			NE		SW		IRR	20.0
			SE		SW		IRR	20.0
			NE		SE		IRR	32.0
			NW		SE		IRR	38.0
			SW		SE		IRR	38.0
			SE		SE		IRR	40.0
							Section Acres	361.0
		9	NE		NE		IRR	35.0
			NW		NE		IRR	38.0
			SW		NE		IRR	39.0
			SE		NE		IRR	35.0
			NE		NW		IRR	40.0
			NW		NW		IRR	30.0
			SW		NW		IRR	39.0
			SE		NW		IRR	39.0
			NE		SW		IRR	39.0
			NW		SW		IRR	40.0
			SW		SW		IRR	37.0

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
14S	36E	9	SE		SW		IRR	38.0
			NE		SE		IRR	30.0
			NW		SE		IRR	39.0
			SW		SE		IRR	35.0
			SE		SE		IRR	38.0
							Section Acres	591.0
		10	NW		NW		IRR	30.0
			SW		NW		IRR	15.0
			NW		SW		IRR	35.0
			SW		SW		IRR	38.0
							Section Acres	118.0
		15	NW		NW		IRR	35.0
			SW		NW		IRR	35.0
			NW		SW		IRR	39.0
			SW		SW		IRR	20.0
							Section Acres	129.0
		16	NE		NE		IRR	35.0
			NW		NE		IRR	15.0
			SW		NE		IRR	10.0
			SE		NE		IRR	33.0
			NE		NW		IRR	38.0
			NW		NW		IRR	35.0
			SW		NW		IRR	35.0
			SE		NW		IRR	25.0
			NE		SW		IRR	35.0
			NW		SW		IRR	38.0
			SW		SW		IRR	38.0
			SE		SW		IRR	35.0
			NE		SE		IRR	38.0
			NW		SE		IRR	5.0
			SW		SE		IRR	10.0
			SE		SE		IRR	20.0
							Section Acres	445.0
		17	NE		NE		IRR	35.0
			NW		NE		IRR	35.0
			SW		NE		IRR	30.0
			SE		NE		IRR	39.0
			NE		NW		IRR	35.0
			NW		NW		IRR	30.0

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
14S	36E	17	SW		NW		IRR	25.0
			SE		NW		IRR	40.0
			NE		SW		IRR	38.0
			NW		SW		IRR	38.0
			SW		SW		IRR	38.0
			SE		SW		IRR	39.0
			NE		SE		IRR	38.0
			NW		SE		IRR	38.0
			SW		SE		IRR	39.0
			SE		SE		IRR	39.0
							Section Acres	576.0
		18	NE		SE		IRR	20.0
			SE		SE		IRR	35.0
							Section Acres	55.0
		19	NE		NE		IRR	35.0
			SW		NE		IRR	40.0
			SE		NE		IRR	35.0
			NE		SW		IRR	40.0
			NW		SW		IRR	40.0
			SW		SW		IRR	38.0
			SE		SW		IRR	40.0
			NE		SE		IRR	35.0
			NW		SE		IRR	38.0
			SW		SE		IRR	40.0
			SE		SE		IRR	40.0
							Section Acres	421.0
		20	NE		NE		IRR	39.0
			NW		NE		IRR	39.0
			SW		NE		IRR	40.0
			SE		NE		IRR	40.0
			NE		NW		IRR	39.0
			NW		NW		IRR	35.0
			SW		NW		IRR	35.0
			SE		NW		IRR	40.0
			NE		SW		IRR	40.0
			NW		SW		IRR	38.0
			SW		SW		IRR	10.0
			SE		SW		IRR	38.0
			NE		SE		IRR	40.0
			NW		SE		IRR	40.0
			SW		SE		IRR	40.0

10. Place of Use: Continued

Township 14S	Range 36E	Section 20	1/4 SE	of 1/4 SE	Lot	Use IRR	Acres 40.0
						Section Acres	593.0
		21	NE	NW		IRR	15.0
			NW	NW		IRR	38.0
			SW	NW		IRR	40.0
			SE	NW		IRR	10.0
			NE	SW		IRR	38.0
			NW	SW		IRR	40.0
			SW	SW		IRR	40.0
			SE	SW		IRR	38.0
			NW	SE		IRR	15.0
			SW	SE		IRR	35.0
						Section Acres	309.0
		28	NW	NE		IRR	25.0
			SW	NE		IRR	25.0
			NE	NW		IRR	38.0
			NW	NW		IRR	38.0
			SW	NW		IRR	38.0
			SE	NW		IRR	38.0
			NE	SW		IRR	35.0
			NW	SW		IRR	36.0
			SW	SW		IRR	36.0
			SE	SW		IRR	35.0
						Section Acres	344.0
		29	NE	NE		IRR	35.0
			NW	NE		IRR	36.0
			SW	NE		IRR	40.0
			SE	NE		IRR	39.0
			NE	NW		IRR	36.0
			NW	NW		IRR	35.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	37.0
			SW	SW		IRR	38.0
			SE	SW		IRR	30.0
			NE	SE		IRR	39.0
			NW	SE		IRR	40.0
			SW	SE		IRR	39.0
			SE	SE		IRR	39.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
Section Acres							603.0
		30	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
			SW	NE		IRR	36.0
			SE	NE		IRR	40.0
			NE	NW		IRR	35.0
			NW	NW		IRR	39.0
			SW	NW		IRR	38.0
			SE	NW		IRR	39.0
			NE	SW		IRR	39.0
			NW	SW		IRR	39.0
			SW	SW		IRR	38.0
			SE	SW		IRR	40.0
			NE	SE		IRR	39.0
			NW	SE		IRR	40.0
			SW	SE		IRR	40.0
			SE	SE		IRR	40.0
Section Acres							622.0
		31	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
			SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			SE	SW		IRR	30.0
			NE	SE		IRR	35.0
			NW	SE		IRR	40.0
			SW	SE		IRR	39.0
			SE	SE		IRR	38.0
Section Acres							542.0
		32	NE	NE		IRR	38.0
			NW	NE		IRR	36.0
			SW	NE		IRR	20.0
			SE	NE		IRR	10.0
			NE	NW		IRR	20.0
			NW	NW		IRR	40.0
			SW	NW		IRR	39.0
			SE	NW		IRR	20.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
14S	36E	32	NW	SW		IRR	35.0
			SW	SW		IRR	35.0
Section Acres							293.0
		33	NE	NW		IRR	30.0
			NW	NW		IRR	40.0
Section Acres							70.0
15S	36E	4	NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	30.0
Section Acres							150.0
		5	NE	NE		IRR	40.0
			SE	NE		IRR	20.0
Section Acres							60.0
		6	NW	NE		IRR	39.0
			NE	NW		IRR	30.0
Section Acres							69.0
Total Acres							8683.0

11. Place of use in counties: ONEIDA, BEAR LAKE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
 15-07167 15-2081 29-2559 15-02081 15-04203

14. Remarks:

15. Basis of Claim: BENEFICIAL USE

SEE (circled) *SAME #* (circled) *Decreed 1878* (handwritten)

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

17. Notice of Appearance:

Notice is hereby given that I, _____ will be
_____ Print Name

acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number A29-13103Date Received 1-13-99Receipt Number E024726NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Malad Valley Irrigation Co. Phone (208) 766-2221
c/o Grant Jones, President
Mailing Address 2601 W. 500 S., Malad, Idaho Zip 83252

2. Date of Priority (Only one (1) per claim) 10/10/1878

3. Source of water supply (a) Birch Creek, aka Mill Creek and Power House
which is tributary to (b) _____

4. a. Location of existing point of diversion is: Township 12 S. Range 36 E. Section 27,
SW 1/4 of NE 1/4 of SE 1/4, Govt. Lot, _____ B.M., County of Oneida

Additional points of diversion if any: _____

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.

Two cement diversion dams (approximately 50 yards apart) divide Birch Creek,
(aka Mill Creek and Power House) 1/4 to north into Birch Creek and Marsh
Creek drainage and 3/4 to south into Devil Creek.

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 4/1 to 11/1 amount 3/4 flow-
6.2 cfs or _____
 For Irrigation from storage purposes from 4/1 to 11/1 amount _____ or 4464
 For Irrigation storage purposes from 11/1 to 4/1 amount _____ or 4464
 For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 6.2 (cfs) and/or (b) 4464 (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	

Total number of acres irrigated 2232

11. In which county (ies) are lands listed above as place of use located? Oneida

12. Do you own the property listed above as place of use? Yes _____ No x
 If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
15-07167, 15-2081/29-2559, 15-02081, 15-04203 or None ()

14. Remarks: Place of use owned by shareholders of Malad Valley Irrigation Co.
Estimated 2232 acres irrigated from Birch Creek (based on 2 A.F./acre)
within 8924 acre place of use of Malad Valley Irrigation Co. Date of
priority based on attached "Decree" dated 10/11/1876.

Last Name _____ Ident No. _____

Copies: White -State, Yellow-Claimant

Last Name _____ Ident No. _____

Copies: White-State, Yellow-Claimant

Scale: 2 inches equals 1 mile

A 16x16 grid of squares. Each square contains a crosshair pattern formed by two dashed lines intersecting at the center. The grid is composed of 16 columns and 16 rows of these squares.

Last Name _____ Ident No. _____

15. Basis of Claim (check one) Beneficial Use X Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

16. Signature (s)
(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____
wish to receive and pay a small annual fee for monthly copies of the docket sheet.
Number of attachments 3

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true
and correct.

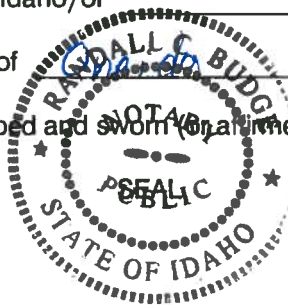
Signature of Claimant (s) _____ Date _____
_____ Date _____

For Organizations: I do solemnly swear or affirm that I am President Title _____
of Malad Valley Irrigation Co. Organization _____, that I have signed the foregoing
document in the space below as President Title _____ of Malad Valley Irrigation Co. Organization _____
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent [Signature]
Title and Organization President, Malad Valley Irrigation Date _____

State of Idaho/or _____)
County of Blaine) SS.

Subscribed and sworn (or affirmed) before me this 28th day of October 19 98
Notary Public Randall C. Budge
Residing at Pocatello, Idaho
My Commission Expires 10/11/2000



Please Print Name

17. Notice of Appearance:
Notice is hereby given that I, Randall C. Budge will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

Signature Randall C. Budge

Address P.O. Box 1391, Pocatello, Idaho 83204-1391

Date 10/28/98

Last Name _____ Ident. Number _____

2
D E C R E E.

IN THE DISTRICT COURT THIRD JUDICIAL DISTRICT OF IDAHO TERRITORY
HELD IN AND FOR THE COUNTY OF ONEIDA.

Thomas Daniels, WM, H. Jones, David Leigh, :
Daniel Thomas Sen., E. J. Davis, Henry R. :
Evans, Richards Jones, Henry Peck, Daniel :
Daniels, James E. Jones and Morgan Morgan, :
Plaintiffs, :

agst.

William Woodland, Henry Wakely, George :
Wakely, John Wakely, Henry Woodland and :
Sam Bamford, :

Defendants.

IN
EQUITY.

.....
The Summons and complaint in this action having been duly served and the answer of the Defendants having been filed thereto and the following agreement and stipulation of the respective parties having been filed in open court on the 10th day of October 1878, to-wit:

It is hereby agreed understood and stipulated by and between the plaintiffs and defendants in this action and each and all of them and by the respective attorneys thereto that the rights privileges and equities of the respective parties to this action shall be as follows, to-wit:

That these plaintiffs are entitled to the use, occupation and control of three quarters of all the waters of a stream situated in Oneida County, Idaho and known as Birch Creek which is the same stream set forth and described in the plaintiffs' Complaint and it is hereby admitted, agreed, understood, and stipulated that the said Plaintiffs' are the first appropriators of the said three quarters of all the waters of the said Birch Creek and are entitled to the exclusive use possession and enjoyment of the same said water to be taken out at a point where plaintiffs ditch now intersects the said Birch Creek. It is further admitted that the said amount of water is not more than sufficient to irrigate the lands of plaintiffs and that the same is necessary for the successful irrigation of their farms and that a decree of this Court be entered in accordance with the prayer of the complaint in this action to the extent of said amount of water and in accordance with the terms of this stipulation. 3/4 MVI

It is agreed, understood, and stipulated on the part of the plaintiffs that the defendants are the first appropriators of one fourth of the waters of the said Birch Creek and are entitled to the exclusive use possession and enjoyment of the same and that a decree of this court be made and entered in their behalf for one fourth of the amount of the waters of the said Birch Creek and it is further admitted that said amount is necessary for the successful irrigation of the lands of these defendants. 1/4 BCC

It is further agreed that the costs of this action be divided and paid equally between the parties thereto.

And it is further agreed and understood that this stipulation is made to carry into effect the former stipulation on file.

Dated Oct. 10th, 1878.

S. P. Highbee,
Willard Crawford, and
B. F. White,
Attys. for plfs.

Norman Buck,
Atty. for dfts.

Daniel
Woodland

BASIN 29; BIRCH CREEK WATER RIGHTS

Mapping: USGS Quad, CC-91, recognizes a perennial stream flowing East from Section 28, T12S, R36E, named Mill Creek. Flowing into NWSW of Section 27 this same stream is called Mill Creek. Then, at a small dam located in the center of the NWSW of Section 27 the same stream trace continues on to the East, but, in NWSW of Section 26 (T12S,R36E) the name changes to Birch Creek and continues on, as such, into Basin 29. Points of diversion and points of injection are in Oneida County.

Brief History: On October 10, 1878, a Decree in Equity (Daniels vs Woodland) was issued. Thereby, allocating $\frac{3}{4}$ of "... all the waters of Birch Creek,..." (no quantitative analysis of flow is mentioned) to Daniels, et al. This $\frac{3}{4}$ flow was (is) diverted, at two points, in NWSW Sec. 27 T12S, R36E and ditched to flow into Basin 15 and on into Devil Creek; ultimately being held for storage in Devil Creek Reservoir. This water right is claimed (SRBA) as 29-13103 and claims the 1878 priority date; held by Malad Valley Irrigation (MVI), in Oneida County.

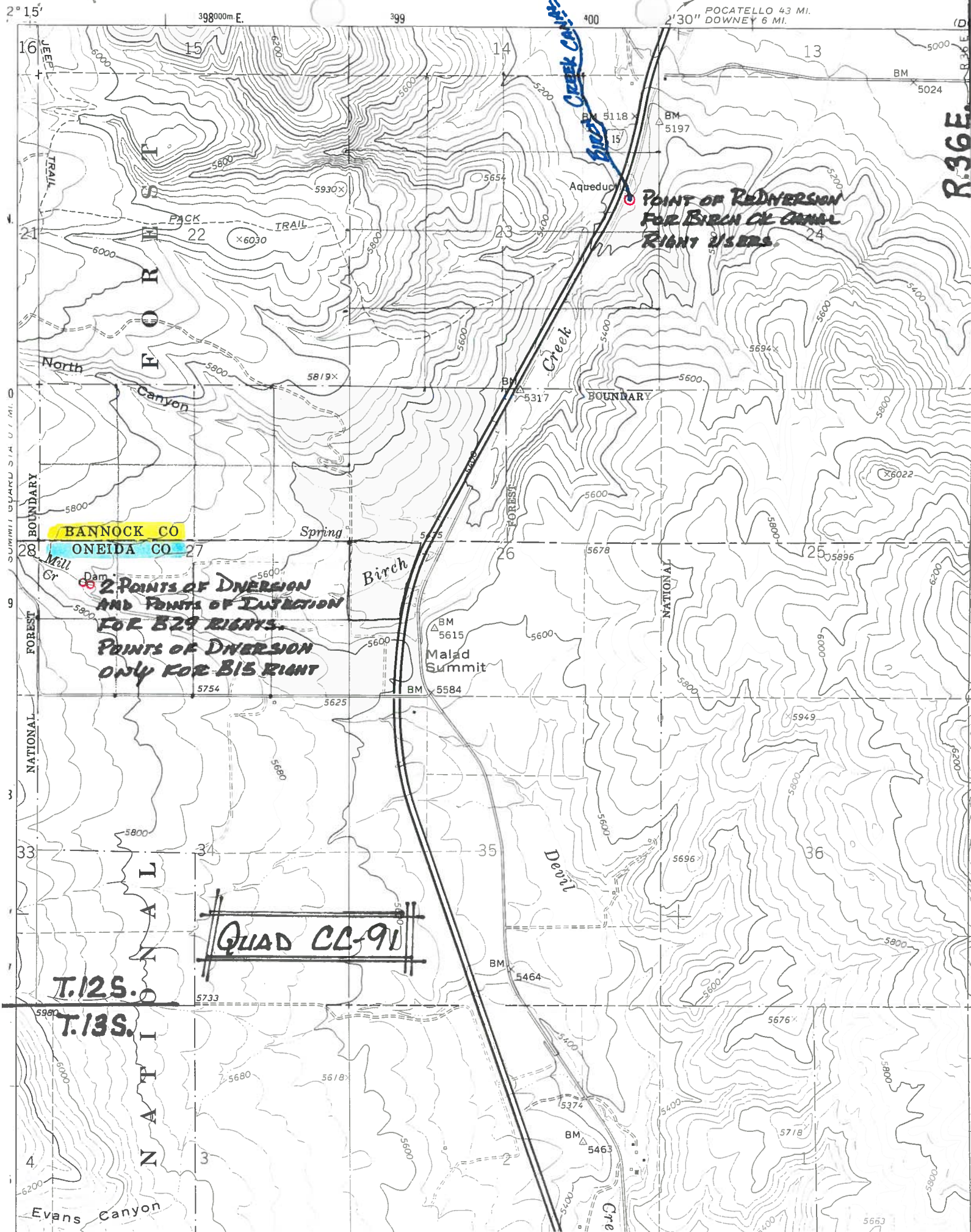
The remaining $\frac{1}{4}$ of flow to, Woodland, et al, (again, no quantitative analysis of flow is recognized) is diverted at the same points of diversion, then injected (same legal description as the diversion, only a few yards downstream) back into the creek channel (Birch Creek) and carried on into Basin 29, Bannock County. Part of the flow of Birch Creek (after the split, as above), on the Basin 29 side, is then rediverted at SESENE Section 23, flows into a pipeline and under Interstate 15, then open flows into Birch Creek Canal system for distribution to several users. The remaining flow continues down the original stream channel to the valley floor and is used by other appropriators.

The Problem: The SRBA claims, from Birch Creek on the Basin 29 side, claim a priority date of June 9, 1904 (priority dates are not recognized by the decree so the decree date is used as the priority date), consistent with Wakley vs Wakley Decree (29-G1). However, Wakley vs Wakley allocates the flow (Basin 29 side) of Birch Creek to the many appropriators and fails to recognize the Daniels vs Woodland Decree setting the priority of Birch Creek waters. Wakley v Wakley also discusses the allocation and distribution of the waters of others streams on the Basin 29 side. And, again, does not recognize priority dates of those streams; therefore the priority date, for the other streams, is the decree date of June 9, 1904, and is appropriate.

However, those claimants of Basin 29 having rights to the waters of Birch Creek ("... $\frac{1}{4}$ of the waters of said Birch Creek") and its Basin 29 tributaries, as address by Daniels vs Woodland, fail to claim the 1878 priority date.

In theory, under the Priority Doctrine, as mandated by the Constitution of the state of Idaho, "first in time is first in right" the appropriators (MVI) of the $\frac{3}{4}$ flow of Birch Creek, claiming some 6.2 cfs, could demand their right be filled in those times of short water years leaving Basin 29 appropriators without water due to their 1904 claimed priority date.

GEOLOGICAL SURVEY



R.36E.

SUMMIT QUAD 514 U / M. 0

FOREST NATIONAL

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T12S, R36E

27

Beech Creek



2-Birch Creek POD's

Devil Creek Reservoir

Malad Valley Irrigation
29-13103

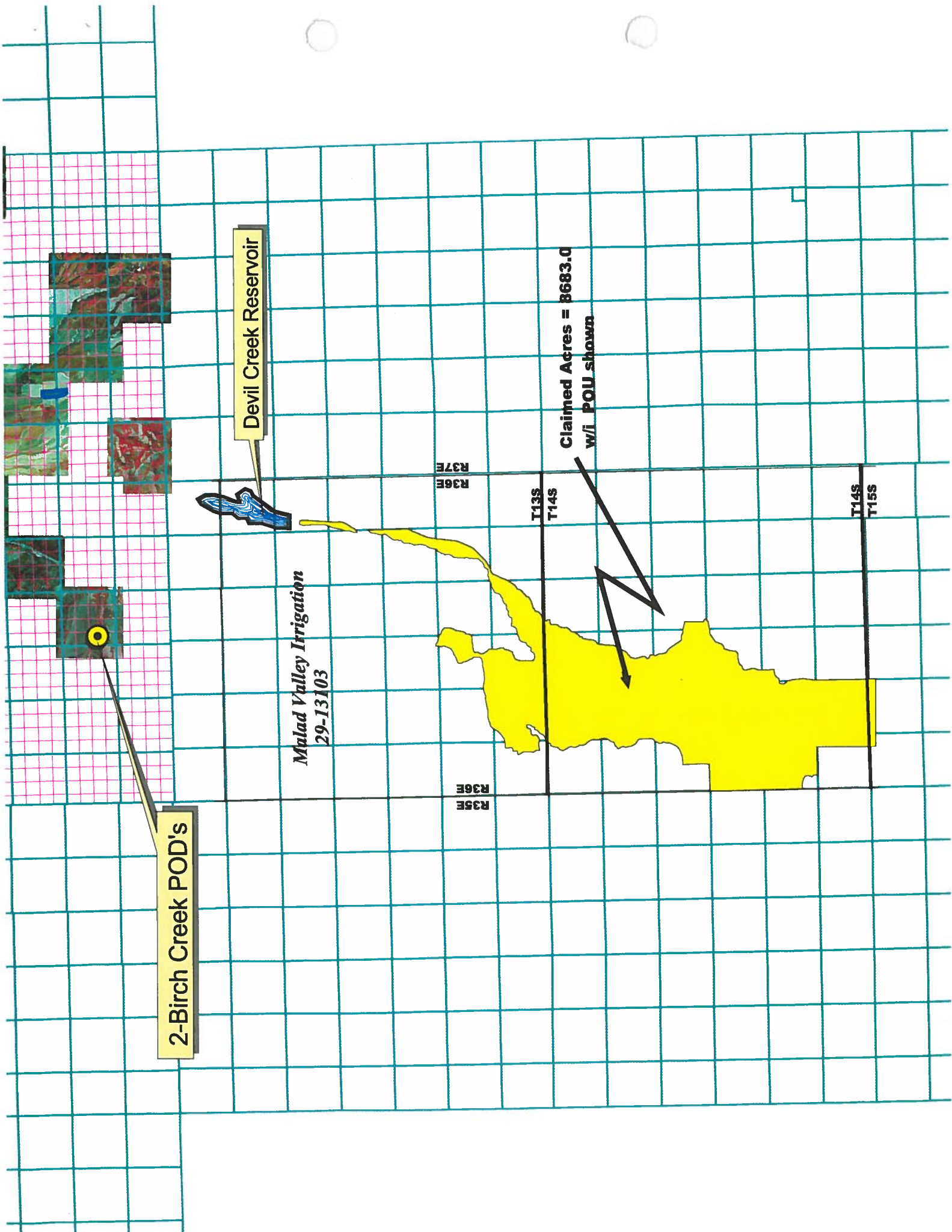
R36E
R37E

R36E
R37E

T13S
T14S

T14S
T15S

Claimed Acres = 8683.0
w/ POU shown



12/03/2002

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-13103
NAME AND ADDRESS: MALAD VALLEY IRRIGATION CO
C/O GRANT JONES
2601 W 500 S
MALAD CITY ID 83252
SOURCE: BIRCH CREEK TRIBUTARY: DEVIL CREEK
QUANTITY: 6.200 CFS
4,464.000 AFY

THIS IS THE SOLUTION TO THE PRIORITY PROBLEM

THE AMOUNT OF WATER DIVERTED UNDER THIS WATER RIGHT MAY NOT EXCEED
A TOTAL OF THREE-QUARTERS OF THE NATURAL FLOW OF BIRCH CREEK
MEASURED AT THE POINTS OF DIVERSION DESCRIBED BELOW AT ANY GIVEN
TIME.

PRIORITY DATE: 10/10/1878

POINT OF DIVERSION:

T12S R36E S27 SWNWSW Within ONEIDA County
T12S R36E S27 SENWSW Within ONEIDA County
T12S R36E S27 SENWSW Injection Within ONEIDA County
T13S R36E S13 SWNW Rediversion Within ONEIDA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION FROM STORAGE	04/01 10/31	4,464.00 AFY
IRRIGATION STORAGE	01/01 12/31	4,464.00 AFY
DIVERSION TO STORAGE	01/01 12/31	6.200 CFS

PLACE OF USE:

8683 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: Decreed

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

Ruberry, Allen

From: Ruberry, Allen
Sent: Thursday, October 31, 2002 3:04 PM
To: McHugh, Candice
Cc: Music, Vicky
Subject: Birch Creek Decreed rights

This area of Basin 29 is covered under Wakley v Wakley, June 9, 1904. And, I have many claims... claiming the decree date, 1904. However, the decree does not consider Priority Dates of individual rights. Ok, so this is not specifically a problem.....until you start considering the Malad Valley Irrigation claim (29-13103) that claims a October 10, 1878 priority. The basis of which is an Equity Decree (Daniels v Woodland,....dated October 10, 1878). Specifically discussing the 1/4....3/4 split of said Birch Creek. The MVI, of course, getting the 3/4 share of all the flow... Maybe I need to explain this too; MVI is an irrigation entity, in B15, that gets part of its water from B29 (Birch Creek).

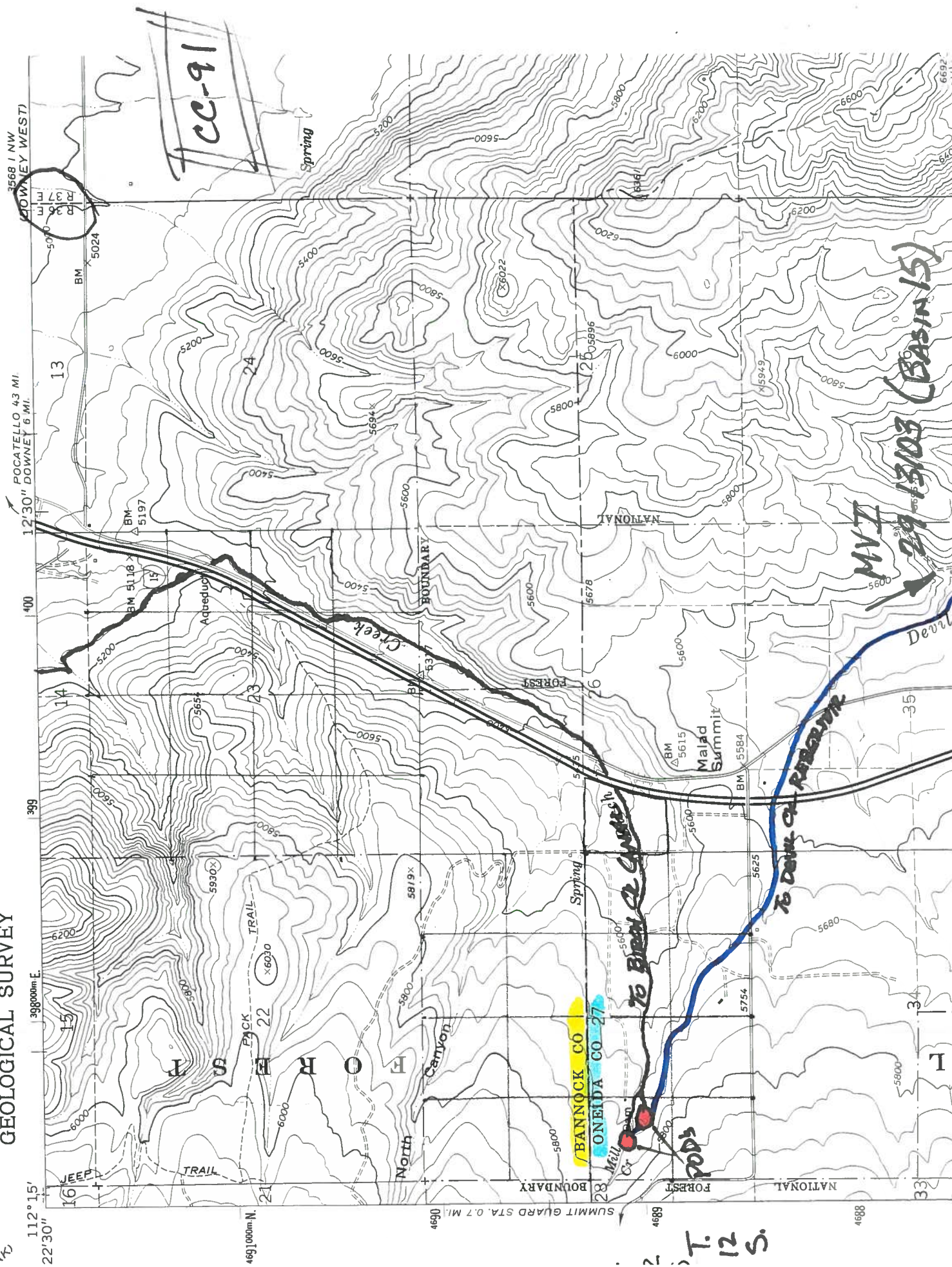
Okay, so now do you see the problem? Or, is there a problem? Seems that MVI could make a call on the Birch Creek water to fill their claimed 6.2 cfs when there is less than that in the creek. Meaning that the Birch Creek side (B29) gets squat.

Sooooo whada ya think?

Birch Ck # 317 up

23
58
—
81

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY



Contacts Data Entry Form

Owner Type _____ Full Name _____ Address _____ City _____ State _____ Zip _____ Phone _____

Current Owner MALAD VALLEY Engr. Co.

Name connector: and _____, or _____, and/or _____

Current Owner _____

Current Owner _____

Representing Attorney: _____ Phone Number: _____

Accompanied By: _____ Phone Number: _____

Relationship to Claimant: _____

Date of Field Exam: _____ Time: _____

Directions to Property (if different from above) and/or update owner information:

BU

STORAGE CLAIM

CLAIM NOTES OTHER RIGHTS USED AS: 15-7167, 15-2081

29-2559, 15-02081, 15-0423.

* 15-2081 AND 15-02081 SAME WRIT; 29-2559 IS

REMARKED AS: SEE 15-2081. 29-2559 DON'T LIST.

OTHER RTs: 29-2559, 15-02081, 15-4203, 15-7167

FB INDICATED

Reviewer: _____

Date: _____

*SEE Attached Writon Right
Report Son 29-2559*

Priority Date Data Entry Form

Claim Number: _____

Water Right Priority Date: _____ Water Right Basis: _____

Claimed Priority Date: 10/10/1878 Claimed Basis: BURecommended Priority Date: _____ Recommended Basis: BU

_____ Use Claimed Priority Date and Basis as Recommended Priority Date and Basis

Document the evidence submitted/reviewed for the priority date claimed, include your analysis of the evidence:

EVIDENCE SUBMITTED IS A COURT ACTION, DECREE, DATED
OCT. 10, 1878.

Q's: HOW DOES EVIDENCE APPLY? IS MVI THE PLAINTIFF OR
DEPENDANT IN SAID DECREE?

WHO IS WHO? IS MVI OWING THE 1/4 OR 3/4 OF BIRCH CR
AS DISCUSSED IN THE DECREE?

? * WITH A COURT ACTION DETAILING OWNERSHIP WHY IS THIS
A BU CLAIM NOT DECREE?

Reviewer: _____

Date: _____

Point of Diversion and Source Data Entry Form

Claim Number: _____

Water Right Point of Diversion: T____, R____, Sec.____,____,____,____. County: _____

Source: _____ Tributary: _____

Claimed Point of Diversion: T 12S, R 36E, Sec. 27, SW, NE, SE. County: OWBIDASource: BIRCH CK Tributary: DEVIL CK

Recommended Point of Diversion: T____, R____, Sec.____,____,____,____. County: _____

Source: _____ Tributary: _____

____ Use Claimed POD and Source as Recommended POD and Source

GPS TAG # A0012406 Lower PO
A0012407 Upper PO

Twp	Rge	Sec	Gov Lot	QQQ of QQ of Q	County	Source
GPS Coordinates:	<u>0646569</u>					<u>0148140</u>
GPS Coordinates:	<u>0644454</u>					<u>0140222</u>
GPS Coordinates:						
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GPS Coordinates:						

Other rights from this POD? _____

Document how the POD and Source were verified and/or Pump and Motor data:

Q: → Claim REFERS TO TWO CONJUNCT DIVERSION DAMS. CLAIM'S
ONE DIVERSION ≈ 100 yds APART → SAME QQ
10/15/02 VISITOR POD'S (2) FROM BIRCH CK w/ DONNIE PHILLIPS
Watermaster WD 296

Transfers Changing POD _____

Reviewer: _____

Date: _____

Place Of Use Data Entry Form

Claim Number: _____

_____ Use Claimed POU as Recommended POU

Claimed Place of Use

Twp	Rge	Sec	QQ	Q	County	Lot Num	Acres	Purpose of Use

Total Acres _____

Recommended Place of Use

Twp	Rge	Sec	QQ	Q	County	Lot Num	Acres	Purpose of Use

Total Acres _____

Document how the POU was verified:

SITE LAND LIST ON CLAIM (- sums 8683⁰ ac.) AND GPS MAP
MADE @ S.D.

Transfers Changing POU _____

Reviewer: _____

Date: _____

Period of Use and Quantity Data Entry Form

Claim Number: _____

___ Use Claimed Period of Use and Quantity as Recommended Period of Use and Quantity

Water Right Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Overall Diversion Rate _____

Overall Diversion Volume _____

Claimed Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
DIV. TO STOR	1/1	12/31	6.2	
Irrig Stor.	1/1	12/31		4464
Prng Fm Stor	4/1	11/01		4464 AFA

Overall Diversion Rate _____

Overall Diversion Volume _____

Recommended Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
DIV. TO STOR	11/1	3/31	X	
Irrig Stor	1/1	12/31		X
Prng Fm Stor	4/1	10/31		X
Prngation	4/1	10/31	6.2 cfs	

Overall Diversion Rate _____

Overall Diversion Volume _____

Document how the Period of Use and/or Diversion Rate were verified:

USE DEPT STD FOR IRRIG 4/1 TO 10/31. SOL/NOT
MENTIONED BY COURT ACTION.

* NEED SOME TYPE OF FLOW RECORDS OR MEASURES ⇒ Cases. & Dam
SAFETY DATA

* CLAIMING 8683⁰ AC BUT ONLY 4464⁰ AFA → WHY?

Reviewer: _____

Date: _____

* Limited to 3/4 OF FLOW OF BIRCH CREEK PER 1878 EQUITY DECREE,

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 29-2559

WATER RIGHT NUMBER: 29-2559

Owner Type Name and Address

Priority Date:

Basis:

Status: See Remarks

<u>Source</u>		<u>Tributary</u>	
<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
	<u>Total Diversion:</u>		<u>Annual Volume</u>

Location of Point(s) of DiversionPlace of UseConditions of Approval:Remarks:

1. General SEE RT. 15-2081. *ATTACHED*

Comments:Dates and Other Information:Dates and Other Information:

Licensed Date:

Decreed Date:

Water Supply Bank Enrollment Accepted:

Water Supply Bank Enrollment Removed:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Decree Defendant:

Decree Plaintiff:

Civil Case Number:

Judicial District:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

Water Right Report 15-2081

Devil Ck Dam - ⁶⁸1969 completed
REBUILT (BIGGER) SYR
ORIGINAL DAM WASHED OUT

MALAD RIVER

4,464.00 AF

Age 36E, B.M.

IRRIGATION STORAGE

[illegible]

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 15-2081

14S 36E 3	40.0	5.0	38.0	34.0								12.0	3.0	35.0	2.0		169.0
14S 36E 4	16.0	40.0	21.0	34.0	40.0	40.0	40.0		23.0	40.0			40.0	40.0	40.0	40.0	454.0
14S 36E 5	40.0	40.0	40.0	40.0	40.0	22.0	40.0	40.0	40.0	34.0	16.0	40.0	40.0	40.0	40.0	40.0	592.0
14S 36E 6				40.0									38.0			8.0	86.0
14S 36E 8	22.0	37.0	17.0	28.0	40.0			26.0					40.0	40.0	40.0	40.0	330.0
14S 36E 9	40.0	40.0	40.0	30.0	40.0	26.0	40.0		40.0	40.0	40.0	40.0	17.0	40.0	40.0	8.0	521.0
14S 36E 10						22.0	7.0		7.0	35.0	40.0						111.0
14S 36E 15											5.0						5.0
14S 36E 16	32.0	37.0	24.0		40.0	35.0	16.0	23.0	30.0	14.0	40.0	40.0	40.0	24.0	40.0	40.0	475.0
14S 36E 17	32.0	38.0		4.0		22.0	16.0	7.0	40.0	40.0	36.0	40.0	21.0	34.0	40.0	40.0	410.0
14S 36E 18				3.0									3.0				6.0
14S 36E 19	27.0		40.0	32.0					40.0	40.0	40.0	40.0	31.0	40.0	40.0	30.0	400.0
14S 36E 20	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	640.0
14S 36E 21		4.0	27.0	10.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	16.0	40.0	40.0	12.0	469.0
14S 36E 28		11.0	3.0		40.0	40.0	40.0	37.0	35.0	40.0	40.0	32.0					318.0
14S 36E 29	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0		40.0	8.0	5.0	34.0	36.0		12.0	455.0
14S 36E 30	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	33.0	33.0	12.0	40.0	33.0	11.0	562.0
14S 36E 31						24.0	36.0		40.0		40.0	40.0	40.0	40.0	40.0	40.0	340.0
14S 36E 32										40.0	40.0						80.0

Total Acres: 7022

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 15-2081

IRRIGATION FROM STORAGE same as IRRIGATION
STORAGE

Conditions of Approval:

Remarks:

Comments:

Dates and Other Information:

Licensed Date: 8/19/1985
Decreed Date:
Water Supply Bank Enrollment Accepted:
Water Supply Bank Enrollment Removed:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal:
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number:
Judicial District:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Exhibit

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC S. HUNN
DAVID E. ALEXANDER**
JAMES P. PRICE***
LISA M. CHRISTON****
RICHARD A. HEARN, M.D.*****
ERIC L. OLSEN

*ALSO MEMBER IL & WY BARS
**ALSO MEMBER MO BAR
***ALSO MEMBER CO BAR
****ALSO MEMBER IL BAR
*****ALSO MEMBER D.C. BAR

LAW OFFICES OF
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED

CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FAX (208) 232-6109

ASSOCIATED WITH
McGRATH, SMITH
& ASSOCIATES
414 SHOUP
P. O. BOX 50731
IDAHO FALLS, ID 83405
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STEPHEN J. McGRATH
BRYAN D. SMITH
NEAL S. RANDALL
†ALSO ADMITTED IN CA

January 5, 1999

IDAHO DEPARTMENT OF WATER RESOURCES
Eastern Division
Attention: Harold Jones
900 N. Skyline Drive
Idaho Falls, Idaho 83402

RECEIVED

JAN 07 1999

Department of Water Resources
Eastern Region

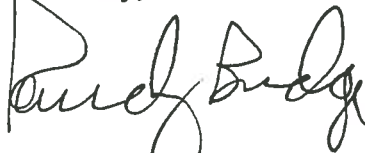
RE: Malad Valley Irrigation Company

Dear Harold:

Thanks for your December 16 letter. I have revised MVI's proposed SRBA Claim on Birch Creek and 243 Claim on Devil Creek accordingly. The original claims are enclosed herewith for filing and processing, together with MVI's check for filing fees in the amount of \$250 on the 243 Claim and \$720 on the SRBA Claim, a total of \$970. Please file and process the same. Would you kindly either return a conformed copy or indicate the number assigned to each and submit a current proof reading report for each.

Thank you for your assistance.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Grant Jones, President/MVI
Lon Corbridge, Secretary/MVI

LAND LIST ATTACHMENT

Description and location of place of use:

[illegible]

