

T3827 BIRCH CREEK

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 3827
WATER RIGHT NO(S). 32-00067/32-00090B

This is to certify that: BIRCH CREEK RANCHES INC
C/O HOLDEN KIDWELL HAHN CRAPO
PO BOX 50130
IDAHO FALLS ID 83405

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
Right No. 32-00067 : IRRIGATION Priority: 09/10/1882	04/15 to 10/15	3.20 CFS	1161.5 AF
Right No. 32-00090B : IRRIGATION Priority: 05/10/1886	04/15 to 10/15	0.80 CFS	290.4 AF
TOTAL:		4.00 CFS	1186.5 AF

SOURCE

BIRCH CREEK

TRIBUTARY OF

SINKS

LOCATION OF POINT(S) OF DIVERSION: Lot 3(NENW), Sec. 5, Township 09N, Range 30E
CLARK County

PLACE OF USE: IRRIGATION

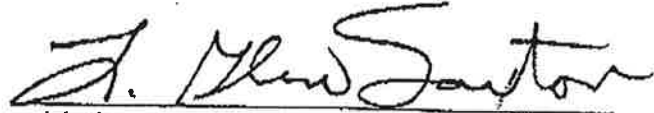
<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>		<u>ACRES</u>		<u>ACRES</u>	<u>TOTAL</u>
09N	30E	4	NESW 1	Lot 6(NWSW)	29	Lot 7(SWSW)	36	
			SESW 29	SWSE	2			97
		5	SENE 5	NESE	20	SESE	2	27
		9	NWNE 20	SWNE	31	NENW	40	
			NWNW 20	SWNW	4	SENW	38	
			NESW 24	SESW	2	NWSE	32	
			SWSE 4					215
Total number of acres irrigated:								339

TRANSFER NO. 3827
WATER RIGHT NO(S). 32-00067/32-00090B

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 32D.
2. A measuring device and lockable controlling works of a type approved by this Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
3. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for the lands above.
4. Approval of this transfer in no way grants any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
5. The change authorized by this transfer shall be accomplished within one (1) year of the date that this approval is final.
6. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
7. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
8. Combined Right Nos. 32-00067 and 32-00090B shall not exceed a total combined annual volume of 1,186.5 af for the total combined irrigation of 339 acres.
9. Any other rights from Birch Creek serving the place of use described above that are in excess of one inch per acre of water or 6.78 cfs, shall be transferred to other lands within the next five (5) years or shall be considered abandoned.
10. The Director retains jurisdiction to determine and assess a delivery loss to be applied at any time water is available for delivery under this approved transfer but would not have been available under the rights appurtenant to these lands prior to approval of this transfer.

Dated this 21st day of March, 1997


Chief, Water Alloc. Bureau



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 7, 1997

Kent Foster
Holden, Kidwell, Hahn, and Crapo
P.O. Box 50130
Idaho Falls, Idaho 83405

Re: Application for Transfer 3827 in the name of Birch Creek Ranches, Inc.

Dear Mr. Foster:

Thank you for your letter of April 4, 1997. I understand your frustration concerning the processing of this application. As usual, the department finds itself in a position of having to make a decision that cannot fully satisfy everyone and, perhaps, not anyone. As you know, the Wagoners have actively sought the immediate approval of this transfer of a right which has been deeded to them. The Findings of Fact in the preliminary order describe the changed conditions that caused me to continue processing. This recognizes your opportunity to object to the preliminary order to allow any unresolved matters to be heard.

You indicate that your letter can be treated as a petition for reconsideration or exceptions to the preliminary order, but further indicates that you do not desire to delay entry of a final order. IDWR is treating your letter as a petition for reconsideration. Rule 730.02a of IDWR's Rules of Procedure (IDAPA 37.01.01) provides that a petition is denied if IDWR does not respond within 21 days of receipt of the petition. Because IDWR did not respond within the 21-day period, the petition is denied by operation of the rules. Accordingly, the preliminary decision will be final on May 19, 1997, without further action of the department.

Your first concern relates to regulation of preseason use under the transferred rights. It is apparent from the information provided in your letter that the approval of the transfer does not, itself, create the concern about early diversions for irrigation or excessive diversion rates for stock watering prior to the irrigation season. These issues could exist with or without approval of the transfer application. If this matter cannot be resolved by communication and cooperation between your client and the Wagoners, the private agreement, to the extent it provides a division of valid water rights, can be enforced by civil action.

Mr. Kent Foster

Page 2

May 7, 1997

Enforcement through the department or the water district requires that the water rights be adequately known. The existing decrees on Birch Creek do not describe stock watering as a separate use. Even so, stock watering rights do exist from Birch Creek where diversion and beneficial use occurred prior to the mandatory permit requirement. To the extent these rights are known, the following options exist for regulation through a watermaster:

1. Water districts have the option of authorizing the elected watermaster to serve year-round.
2. Section 42-608(1), Idaho Code, provides for the watermaster to be called on upon the petition of one wateruser stating the necessity for regulation.
3. Section 42-608(5), Idaho Code, provides for the term of service to be extended after the irrigation season under certain conditions.

Next, you inquire whether the Wagoners have water rights for stock watering other than the contractual agreement with Ted Sorenson. Wagoners filed Claim No. 32-10003 in the Snake River Basin Adjudication which lists stockwater as a use. The stockwater part of this claim is for 0.07 cfs from Birch Creek during the period February 15 to November 20 of each year. A 1930 priority is claimed.

Eight other claims filed by Wagoner on previously decreed rights from Birch Creek now deeded to your client, listed stockwater as an incidental use to the irrigation use claimed.

Condition 8. The 1,186.5 AF annual volume was calculated by the procedure outlined in your letter. The volume represents a reasonable field headgate requirement and does not take into account a delivery loss from the point of diversion to the field headgate. It is not intended that the watermaster will limit the use of water in accordance with this volume.

Condition 10. The reasoning behind this condition relates to the nature of the exchange accomplished by the Sorenson/Wagoner agreement. Delivery has been made at the Wagoner diversion under the rights originally appurtenant to his lands. To the extent that these junior rights would have been in priority, it does not seem that the creek loss will be increased by delivering water to the same point under an earlier priority right. When water availability causes these junior rights to be curtailed, the delivery of the senior priority right a longer distance in a losing reach will increase the bedloss, and under that situation a delivery loss will be assessed to the right transferred to Wagoner under the approval.

Will the same logic be applied to Sorenson? It will be under similar circumstances. The loss to be assessed is an issue in a contested case involving Mr. Sorenson's transfer and must be left for determination in that proceeding.

Mr. Kent Foster
Page 3
May 7, 1997

Please contact me if you have additional questions on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman C. Young". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

NORMAN C. YOUNG
Administrator
Water Management Division

c: Mac Wagoner
Breck Barton
Peter Anderson
Blair J. Grover
George Petersen
Jerry Rigby

December 3, 1996

RECEIVED

DEC 4 1996

Department of Water Resources
Eastern Region

Idaho Department of Water Resources
1301 North Orchard
Boise, ID. 83706
Attn: Mr. Carl Drehr, Director

Dear Mr. Drehr:

I'm writing in reference to Transfer Number 3827.
In the name of Birch Creek Ranches and Mac & Betty
Wagoner a trade of priority dates water rights in
the amount of 4 C.F.S. to my 339 acres on Birch Creek.
This all started in 1993.

This was sent to Boise from your Idaho Falls office
for approval on 3-27-96. Since then no information
has been asked for so I assumed everything was ok
for approval.

I contacted Harold Jones at your Idaho Falls office
on 7-16-96 about the status of this transfer of which
he nor I had heard anything.

On 9-16-96 Mr. Harold Jones upon my request asked
the status of this transfer and the bar-queary as of
8-15-96 says it is on Jim Johnson desk.

This transfer started in 1993 and nothing as been and
apparently nothing is being done about this. This is
very frustrating and very upsetting to think this is
just setting on someones desk, when it is so important
that it be approved at once.

Your help Mr. Drehr in getting this done and over
with will be greatly appreciated, as I feel this has
been carried on way to long.

very truly yours,



Mac Wagoner
P.O. Box 296
Dubois, ID. 83423

cc Harold Jones IDWR Idaho Falls office

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 3827

AMENDED APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 FEB 13 1991

Name of applicant Birch Creek Ranches, Inc. Phone (208) 523-0620
Post Office address c/o Holden, Kidwell, Hahn & Crapo, P.O. Box 50130, Idaho Falls, ID 83405

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
- Describe the reason for the proposed changes Birch Creek Ranches and Mac and Betty Wagoner have resolved the dispute raised by Wagoners' protest in this proceeding and which was the subject of a separate action in Clark County District Court in Case No. 2-462. See attached copy of Memorandum of Agreement. (Attachment No. 1)

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use	
<u>32-0067</u>	<u>09/10/1882</u>	<u>3.2 cfs</u>	<u>Irrigation</u>	<u>04/01</u>	to <u>11/01</u>
<u>"</u>	<u>"</u>	<u>.8 cfs</u>	<u>Stockwater</u>	<u>03/01</u>	to <u>12/01</u>
<u>32-0090 B</u>	<u>05/10/1886</u>	<u>.8 cfs</u>	<u>Irrigation</u>	<u>04/01</u>	to <u>11/01</u>
_____	_____	_____	_____	_____	to _____

- Total amount of water being transferred 4.0 cubic feet per second and/or _____ acre-feet per annum.
- Source of water Birch Creek tributary to Sinks
- Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
<u>3</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>5</u>	<u>9N</u>	<u>30E</u>	<u>Clark</u>	<u>Wagoner Diversion</u>

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
<u>9N</u>	<u>30E</u>	<u>4</u>									<u>1</u>	<u>29</u>	<u>36</u>	<u>29</u>			<u>2</u>		<u>97</u>
												<u>L6</u>	<u>L7</u>						
		<u>5</u>				<u>L-6</u> <u>5</u>									<u>L-7</u> <u>20</u>			<u>L-7</u> <u>2</u>	<u>27</u>
		<u>9</u>		<u>20</u>	<u>31</u>		<u>40</u>	<u>20</u>	<u>4</u>	<u>38</u>	<u>24</u>			<u>2</u>		<u>32</u>	<u>4</u>		<u>215</u>

PART 1

6. General Information:

a. Description of diversion system Wood and steel headgates and overflow structure on East bank of Birch Creek; open ditch to place of use.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the ^effect on the land now irrigated if the place of use is changed pursuant to this transfer:

Land will no longer be irrigated.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 32-0067 Decreed to Wood Livestock Co.
in case of Agnes B. Reno, et al. vs. J. R. Richards, et al.
dated 09/06/1922 in 9th District Court county of Fremont
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. 2165 which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Birch Creek tributary to Sinks

4. Date or priority 09/10/1882

5. Water is used for the following purpose:

amount 3.2 cfs for Irrigation purposes from 04/01 to 11/01
(cfs/ac-ft)
amount .8 cfs for Stockwater purposes from 03/01 to 12/01
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 3.2 cfs cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion: See Attachment No. 2

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

8. Lands irrigated or place of use: See Attachment No. 3

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

9. Describe any other water rights used for the same purpose as described above 32-0090, 32-0093, 32-0068,
32-0089, 32-0069, 32-0092, 32-0061, and 32-0091.

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 32-0090 Decreed to C. B. Watts
in case of Agnes B. Reno, et al. vs. J. R. Richards, et al.
dated 09/06/1922 in 9th District Court county of Fremont
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. 2165 which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Birch Creek tributary to Sinks

4. Date or priority 05/10/1886

5. Water is used for the following purpose:

amount 1.6 cfs for Irrigation purposes from 04/01 to 11/01
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 1.6 cfs cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion: See Attachment No. 2

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

8. Lands irrigated or place of use: See Attachment No. 3

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

9. Describe any other water rights used for the same purpose as described above 32-0067, 32-0093, 32-0068,
32-0089, 32-0069, 32-0092, 32-0061, and 32-0091.

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount .8 cfs for Irrigation purposes from 04/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion: See Attachment No. 2

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use: See Attachment No. 3

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change) But see accompanying amended application for transfer to transfer this portion to lands of B&D Enterprises, Inc.

1. amount .8 cfs for Irrigation purposes from 04/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion: See Attachment No. 2

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

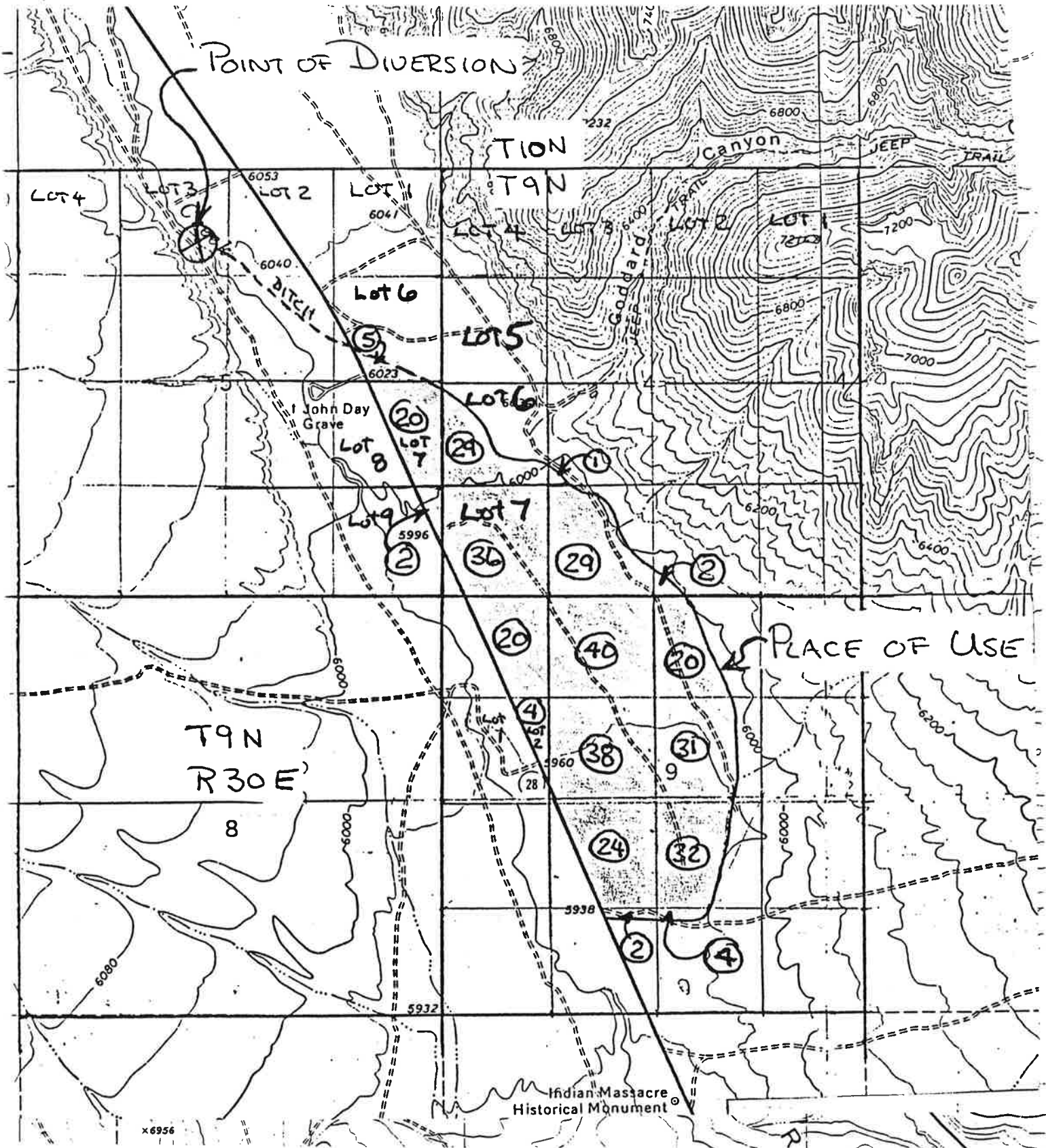
3. Lands irrigated or place of use: See Attachment No. 3

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.



PART 3**B. CHANGES IN NATURE OF USE**

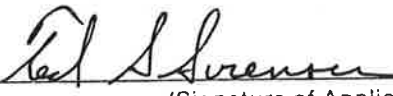
1	<u>New Nature of Use</u>	<u>Amount</u> (cfs/ac-ft)	<u>Hours/days/year</u>	<u>Period of Use</u>
	_____	_____	_____	_____ to _____
	_____	_____	_____	_____ to _____

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

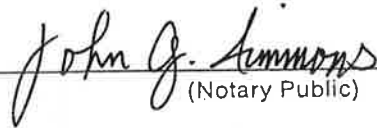
I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.



 (Signature of Applicant)

Subscribed and sworn to before me this 6th day of February, 19 91.



 (Notary Public)

My commission expires 2-19-91

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by HUT Date 2-12-91 Protest filed by _____Prelim. check by KCW Fee 50.00 _____Receipted by HUT E015683 Date 2-12-91 _____Published in State wide Copies of protest forwarded by _____Pub. dates 4-18 & 25-91 Hearing held by _____ Date _____Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

Donald L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLARK

TED S. SORENSON and GAYLE)
SORENSON, dba SORENSON)
ENGINEERING and BIRCH POWER)
COMPANY, INC.,)
Plaintiffs,)
vs.)
MAC WAGONER and BETTY WAGONER,)
husband and wife,)
Defendants.)

Case No. 2-462

MEMORANDUM OF AGREEMENT

COME NOW Ted S. Sorenson, Gayle Sorenson d/b/a Sorenson Engineering, Birch Power Company, Inc. and Birch Creek Ranches, Inc. (Sorensens) and Mac Wagoner and Betty Wagoner (Wagoners) and enter into the following Memorandum of Agreement which agreement shall be made final by execution of settlement and release documents consistent herewith.

1. The season of use for Water Right No. 32-7067 and .8 cfs of the Right No. 32-0090 of the waters of Birch Creek,

which shall be transferred to Wagoners, shall hereafter be from April 1st of each year to and including October 15th of the same year; provided, however, that Wagoners may commence diversion of water under such right, if they deem it appropriate, later than April 1st in any given year, and if they do so, the same number of days from April 1st until the day such diversion is first commenced shall be added at the end of the irrigation season for such year so that they may continue diversions under such right for the same number of days after October 15th as elapsed between April 1st and the date subsequent thereto when diversion of water under such right actually began for such year. It is understood that regardless of the date diversions under such right commence, and regardless of whether water is or is not diverted under such right at any time during the above described season of use, such season shall not be extended longer than the actual number of days between April 1st and October 15th.

2. Sorensons will transfer to Wagoners the water rights on Birch Creek identified as Right No. 32-0067 for 3.2 cfs with a priority date of September 10, 1882 and Right No. 32-0090 for a portion of that right of .8 cfs with a priority date of May 10, 1886. Wagoners will transfer to Sorensons Water Right No. 32-0102 for 4.0 cfs with a priority date of May 10, 1889.

3. Sorensons will purchase from Wagoners, Wagoners "high

water" rights consisting of the following:

<u>NO.</u>	<u>CFS</u>	<u>PRIORITY</u>
0073	.2	05/15/1909
0085	.2	05/10/1910
0077	.2	05/15/1910
0086	.2	05/01/1911
0078	.2	05/15/1911
0087	.2	05/01/1912
0079	.8	05/15/1913

Sorensons will pay to Wagoners the amount of fifteen thousand dollars (\$15,000.00) after the transfer of the above-referenced rights.

4. Wagoners shall withdraw their notice of claim filed in the Snake River Basin Adjudication for 500 miner's inches (10 cfs) of "high water".

5. The 4 cfs or 200 inches of water represents Wagoners water. Sorensons agree to subordinate any additional water developed by them over which they have control as a result of any water saving effort such as lining portions of Birch Creek or any changes to the minimum bypass flow to Wagoners water. Wagoners will make no protest to any water saving activity undertaken by Sorensons.

6. Sorensons agree that in addition to the irrigation water rights listed herein Wagoners will be entitled to divert up to 40 miner's inches (.8 cfs) of the water right which Sorensons will transfer to them which is Right No. 32-0067 for

stockwatering purposes commencing on or after March 1st of any year until such time as irrigation water is diverted and may continue such diversions in the same amount from the time irrigation ceases to no later than December 1st.

7. Wagoners shall not acquire in any way, directly or indirectly, through whatever means any water rights to the waters of Birch Creek held by George Woodie.

8. That Wagoners will withdraw their protest to the transfer of Sorensons now pending before the Idaho Department of Water Resources. The parties agree that this Memorandum of Agreement and the Settlement and Mutual Release that shall be entered into shall be conditioned on the premise that the Idaho Department of Water Resources does not require Wagoners to take land out of production for having sold the "high water" rights.


Ted S. Sorenson


Gayle Sorenson 

BIRCH POWER COMPANY, INC.

By: 
Ted S. Sorenson, President

BIRCH CREEK RANCHES, INC.

By: _____

Ed Stenson

Approved as to Form and Content By:

Donald L. Harris

Donald L. Harris, Esq.

HOLDEN, KIDWELL, HAHN & CRAPO

Mac Wagoner

Mac Wagoner

Betty Wagoner

Betty Wagoner

Approved as to Form and Content By:

Breck H. Barton

Breck H. Barton, Esq.
BARTON & ASSOCIATES

#5491.00
8029h/srr

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	NE	24	10N	29E	Clark	
		NE	SE	24	10N	29E	Clark	
		SE	NE	24	10N	29E	Clark	
		SW	SW	29	10N	30E	Clark	
		NW	NW	32	10N	30E	Clark	
		NE	NE	14	10N	29E	Clark	
		NE	SW	11	10N	29E	Clark	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
10N	29E	11						30	35	35	30					35	10	40	215
		12											35						35
		13						35	40			15							90
		14	35			20													55
		24																25	25
		25	10																10
10N	30E	19							30			10	15	35			20		110
		29											20						20
		30	10	20	30	20	20	35		35									170
		32		5	15		35	20		40	35					40	40		230

Total acres 960

M E M O R A N D U M

FROM: H. W. JONES
TO: PAM SKAGGS
DATE: APRIL 24, 1996
RE: BIRCH CREEK RANCHES TRANSFER #3827

I just needed to give you some history and recent activity about this transfer and others that might help the Wagoners get this approved. As you are aware, Transfer 2165 put a group of rights on to 960 acres. Rights 32-00067 and 32-00090 were a part of that. Now, Mr. Wagoner and Mr. Sorensen (Birch Creek Ranches), simply wish to swap rights because of the priority advantage the Wagoners need. All the users below Wagoners have agreed this is acceptable.

At this point, Birch Creek Ranches now own all of Wagoner's other rights that were appurtenant to Wagoner's 339 acres. I have in hand a transfer application that Birch Creek Ranches recently filed to take Wagoner's old rights, the remainder of the rights left on the acres left on Transfer 2165 (960-339), and along with other rights, move them all to a new place of use.

The net effect is no additional acres irrigated. This seems to be our goal, so I would expect that we could approve Transfer 3827 under the circumstances.

Wagoners were willing to take a trade of 4 cfs for 6 cfs to use on their ground strictly for the 1882 priority to avoid being shut off by the watermaster. Birch Creek Ranches can then pass what water is left down through the power plant and then on to LaVar Newman, D & D Ranches, and to the new proposed place of use that Birch Creek Ranches has acquired.

