

Birch Creek

32-0~~1~~

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

XX

J. R. Richards,

Plaintiff,

vs

Frank Reno, S. Kuharski, William
Goddard, W. A. Tyler, Samuel Goddard,
M. Kaufman, W. A. Scott, W. W. Johnson,
Thomas Miller, David Miller, Edward
Kaufman, and Henry Kaufman,
Defendants,

X
X
X
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X
X
X
X
X
X
X
X

XX

JUDGMENT AND DECREE.

This cause came on regularly for trial under a stipulation of the respective parties and their attorneys heretofore signed and filed. Messrs J. Ed Smith and W. T. Smith appeared as attorneys for Plaintiff, Messrs Regyes and Terrell appeared as attorneys for H. Kaufman, Edward Kaufman and Henry Kaufman, Messrs Quarles and Averitt appeared as Attorneys for W. W. Johnson, S. Kuharski and W. A. Scott, Messrs Stewart & Dietrich appeared as Attorneys for W. A. Tyler, Thomas Miller and David Miller, Messrs S. C. Winters and R. V. Conier appeared as attorneys for Frank Reno, and Mr. Thomas R. Barber appeared as attorney for Samuel Goddard and William Goddard, and the parties were all present in person.

The Court proceeded to the hearing of the testimony and all the parties with their witnesses having duly testified, which said testimony was taken by the Court Stenographer and the documentary and record testimony having been duly admitted, and the Court having listened to the argument of the respective counsel, the cause was closed and finally submitted to the Court for its consideration and adjudication.

And the Court after due consideration in the premises renders its decision and files its Findings of Facts and Conclusions of Law and orders Judgment to be entered in accordance therewith.

NOW THEREFORE IT IS ORDERED ADJUDGED AND DECREED,

First.

That the defendant W. W. Johnson do have at all times a flow of 160 inches of water, measured under a four inch pressure of the wates of Birch Creek a stream situated in Fremont County, State of Idaho, and the

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to the use thereof to date from July 29, 1907,

That defendant, Lillian Watts, have no decree to or for any of the waters of said Birch Creek.

That defendant, Birch Creek Irrigation Company, have no decree to any waters of said Birch Creek.

Trans. #2165
32 0089 That C. B. Watts also have the use at all times of two and one-half (2½) cubic feet per second of time (one hundred and twenty-five miners' inches), the same being one-half of the decreed right of Ed. M. Henry and M. Kaufman, dating from May 10th, 1888; and one and three-fifths (1 3/5) cubic feet per second of time (eighty miners' inches), the same being one-half of the decreed right of W. W. Johnson, dating from May 10th, 1886; of the waters of Birch Creek; all of said waters to be used upon and become appurtenant to the following described lands, to-wit:

The West Half of the South-east Quarter, the North-east Quarter of the South-

west Quarter and the South-east Quarter of the North-west Quarter of Section Twenty-three (23), in Township Ten (10) North of Range Thirty (30) East of Boise Meridian;

Trans. #2165
32 0091 That Edward Kaufman have at all times the use of one half of one cubic foot (½) per second of time (twenty-five miners' inches) of the waters of the said Pass Creek, his right to the use of the same to date from the 1st day of May, 1901;

Trans. #2165
32 0092 That Edward M. Kaufman also have the use at all times of two and one-half (2½) cubic feet per second of time (one hundred and twenty-five miners' inches), the same being one-half of the decreed right of M. Kaufman, Edward M. Kaufman and Henry D. Kaufman, and dating from May 10th, 1888; also one and three-fifths (1 3/5) cubic feet per second of time (eighty miners' inches), the same being one half of the decreed right of W. W. Johnson and dating from May 10th, 1886; said heretofore decreed water and all of it being taken from the main channel of Pass Creek and all of said water to be used upon and become appurtenant to the following described lands.

Trans. #2165
32 0093 The South Half of the South-west Quarter of Section Twenty-nine (29), the North Half of the North-west Quarter of Section Thirty-two (32), the North-west Quarter of the South-west Quarter of Section Twenty-nine (29), the North-east Quarter of the South-east Quarter of Section Thirty (30), in Township Ten (10) North of Range Thirty (30) East of the Boise Meridian, in Clark County, State of Idaho, containing two hundred and forty acres.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5450

WATER RIGHT NO(S). 32-00058/32-00059/32-00060/32-00061C/32-00061D
32-00062/32-00063/32-00064/32-00065/32-00066/32-00068/32-00069
32-00070A/32-00070B/32-00073/32-00074/32-00075/32-00076/32-00077
32-00078/32-00079/32-00080/32-00083/32-00085/32-00086/32-00087
32-00089/32-00090A/32-00091/32-00092/32-00093/32-00101/32-00102
32-02043 & 32-02045

This is to certify that: **RENO DITCH COMPANY**
C/O KENT FOSTER
HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405

The requested changes have been reviewed in accordance with the provisions of Section 42-222, Idaho Code, and are hereby approved as hereafter set forth. The rights shall be used as herein described in accordance with the conditions of approval and applicable laws and rules.

	<u>PRIORITY</u>	<u>DIVERSION RATE</u>	<u>ACRES</u>	<u>ANNUAL VOLUME</u>
Right No. 32-00058 :	04/01/1910	1.00 CFS	67.0	234.5 AF
Right No. 32-00059 :	05/10/1884	6.40 CFS	320.0	1120.0 AF
Right No. 32-00060 :	05/10/1883	3.20 CFS	320.0	1120.0 AF
Right No. 32-00080 :	05/10/1886	3.20 CFS	320.0	1120.0 AF
Right No. 32-00061C :	05/10/1888	0.40 CFS	20.0	70.0 AF
Right No. 32-00068 :	05/10/1887	3.20 CFS	160.0	560.0 AF
Right No. 32-00069 :	05/10/1888	3.20 CFS	160.0	560.0 AF
Right No. 32-00073 :	05/15/1909	0.20 CFS	160.0	84.9 AF
Right No. 32-00077 :	05/15/1910	0.20 CFS	160.0	84.9 AF
Right No. 32-00078 :	05/15/1911	0.20 CFS	160.0	84.9 AF
Right No. 32-00079 :	05/15/1913	0.80 CFS	160.0	339.6 AF
Right No. 32-00085 :	05/10/1910	0.20 CFS	120.0	84.9 AF
Right No. 32-00086 :	05/01/1911	0.20 CFS	120.0	84.9 AF
Right No. 32-00087 :	05/01/1912	0.20 CFS	120.0	84.9 AF

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TRANSFER NO. 5450

Right No. 32-00089	:	05/10/1888	2.50 CFS	160.0	560.0 AF
Right No. 32-00090A	:	05/10/1886	0.80 CFS	80.0	280.0 AF
Right No. 32-00091	:	05/01/1901	0.50 CFS	240.0	212.2 AF
Right No. 32-00092	:	05/10/1888	2.50 CFS	240.0	840.0 AF
Right No. 32-00093	:	05/10/1886	1.60 CFS	240.0	679.2 AF
Right No. 32-00102	:	05/10/1889	4.00 CFS	120.0	420.0 AF
Right No. 32-00061D	:	05/10/1888	2.80 CFS	140.0	490.0 AF
Right No. 32-00070A	:	08/19/1886	2.40 CFS	120.0	420.0 AF
Right No. 32-02043	:	09/19/1912	6.40 CFS	320.0	1120.0 AF
Right No. 32-00062	:	04/01/1904	3.20 CFS	160.0	560.0 AF
Right No. 32-00070B	:	09/19/1886	0.80 CFS	40.0	140.0 AF
Right No. 32-02045	:	11/16/1912	6.40 CFS	320.0	1120.0 AF
Right No. 32-00063	:	04/01/1904	3.20 CFS	159.2	557.2 AF
Right No. 32-00065	:	05/10/1884	3.20 CFS	160.0	560.0 AF
Right No. 32-00064	:	04/01/1907	3.20 CFS	160.0	560.0 AF
Right No. 32-00066	:	01/05/1910	6.40 CFS	320.0	1120.0 AF
Right No. 32-00074	:	10/01/1910	0.14 CFS	160.0	59.4 AF
Right No. 32-00075	:	05/15/1911	0.26 CFS	160.0	110.4 AF
Right No. 32-00076	:	05/15/1912	0.80 CFS	160.0	339.6 AF
Right No. 32-00083	:	05/15/1912	0.46 CFS	160.0	195.3 AF
Right No. 32-00101	:	06/04/1909	2.90 CFS	160.0	560.0 AF
TOTALS:			* 77.06 CFS	* 3427.0	* 11579.2 AF

BENEFICIAL USE
IRRIGATION

PERIOD OF USE
04/01 to 11/01

SOURCE
BIRCH CREEK

TRIBUTARY OF
SINKS

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TRANSFER NO. 5450

LOCATION OF POINT(S) OF DIVERSION:SESW , Sec. 34, Township 09N, Range 30E
CLARK CountyPLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>		<u>ACRES</u>		<u>ACRES</u>		<u>ACRES</u>	<u>TOTAL</u>
08N	31E	12	SESW	40	NESE	40	NWSE	40	
			SWSE	40	SESE	40			200
		13	NENE	40	NWNE	40	SWNE	40	
			SENE	40	NENW	40	NWNW	40	
			SWNW	40	SESW	40	NESW	40	
			NWSW	40	NESE	40	NWSE	40	480
		14	NENE	40	SENE	40			80
32E	1	Lot 1 (NENE)	34	Lot 2 (NWNE)	34		SWNE	40	
			SENE	40	Lot 3 (NENW)	34	Lot 4 (NWNW)	20	
			SWNW	40	SESW	40	NESW	40	
			NWSW	40	SWSW	40	SESW	40	
			NESE	40	NWSE	40	SWSE	40	
			SESE	40					602
	2	Lot 1 (NENE)	2	SWNE	3	SENE	30		
			NESW	3	SWSW	3	SESW	30	
			NESE	40	NWSE	40	SWSE	40	
			SESE	40					231
	10		SENE	15	NESW	40	Lot 3 (NWSW)	41	
		Lot 4 (SWSW)	42	SESW	40	NESE	40		
			NWSE	40	SWSE	40	SESE	40	338
	11		NENE	40	NWNE	40	SENE	40	
			NENW	40	NWNW	20	SWNW	40	
			SESW	40	NESW	40	NWSW	40	
			SWSW	40	SESW	40			420
	12		NWNE	40	NENW	40	NWNW	40	
			SWNW	40					160
	14		NENW	40	NWNW	40			80
	15		NENE	40	NWNE	40	SWNE	40	
			SENE	40	NENW	40	Lot 1 (NWNW)	42	
		Lot 2 (SWNW)	42	SESW	40				324
33E	5	Lot 3 (NENW)	34	Lot 4 (NWNW)	34	SWNW	40		
			SESW	40	NWSW	40	SWSW	40	228
	6	Lot 1 (NENE)	34	Lot 2 (NWNE)	34	SWNE	40		
			SENE	40	Lot 3 (NENW)	34	Lot 4 (NWNW)	17	
		Lot 5 (SWNW)	20	SESW	40	NESW	40		
		Lot 6 (NWSW)	20	Lot 7 (SWSW)	20	SESW	40		
			NESE	40	NWSE	40	SWSE	40	
			SESE	40					539
	7		NENE	40	NWNE	40	SWNE	40	
			SENE	40	NENW	40	NESE	40	
			NWSE	40	SWSE	40	SESE	40	360
	8		NENW	40	NWNW	40	SWNW	40	
			SESW	40	NESW	40	NWSW	40	
			SWSW	40	SESW	40			320

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TRANSFER NO. 5450

09N 31E 31	NESW 40	Lot 3 (NWSW) 40	Lot 4 (SWSW) 40	
	SESW 40	NESE 40	NWSE 40	
	SWSE 40	SESE 40		320
32	NENE 40	NWNE 40	SWNE 40	
	SENE 40	NENW 40	NWNW 40	
	SWNW 40	SENW 40	NESW 40	
	NWSW 40	SWSW 40	SESW 40	480
32E 36	NENE 40	NWNE 40	SWNE 40	
	SENE 40	NENW 40	NWNW 40	
	SWNW 40	SENW 40	NESW 40	
	NWSW 40	Lot 4 (SWSW) 35	Lot 3 (SESW) 41	
	NESE 40	NWSE 40	Lot 2 (SWSE) 40	
Lot 1 (SESE) 40				636
				* 5798

Permissible Place of Use Acres:

* 5798

CONDITIONS OF APPROVAL

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 32D.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department 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 3.5 afa per acre at the field headgate for irrigation of the lands above.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. 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.
7. Rights 32-00060 and 32-00080 when combined shall not exceed the total annual diversion volume of 1120.0 af and the irrigation of 320.0 acres.
8. Rights 32-00073, 32-00077, 32-00078 and 32-00079 when combined shall not exceed the total annual diversion volume of 560.0 af and the irrigation of 160.0 acres.
9. Rights 32-00085, 32-00086 and 32-00087 when combined shall not exceed the irrigation of 120.0 acres.
10. Rights 32-00089 and 32-00090A when combined shall not exceed the total annual diversion volume of 560.0 af and the irrigation of 160.0 acres.
11. Rights 32-00091, 32-00092 and 32-00093 when combined shall not exceed the total annual diversion volume of 840.0 af and the irrigation of 240.0 acres

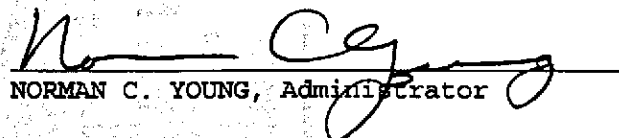
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TRANSFER NO. 5450

12. Rights 32-00061C, 32-00068, 32-00069, 32-00073, 32-00077, 32-00078, 32-00079, 32-00085, 32-00086, 32-00087, 32-00089, 32-00090A, 32-00091, 32-00092, 32-00093 and 32-00102 when combined shall not exceed the total annual diversion volume of 3360.0 af and the irrigation of 960.0 acres.
13. Rights 32-00061D, 32-00070A and 32-02043 when combined shall not exceed the total annual diversion volume of 1120.0 af and the irrigation of 320.0 acres.
14. Rights 32-00062, 32-00070B and 32-02045 when combined shall not exceed the total annual diversion volume of 1120.0 af and the irrigation of 320.0 acres.
15. Rights 32-00063 and 32-00065 when combined shall not exceed the total annual diversion volume of 560.0 af and the irrigation of 160.0 acres.
16. Rights 32-00074, 32-00075, 32-00076 when combined shall not exceed the irrigation of 160.0 acres.
- * 17. All rights under Transfer 5450 when combined shall not exceed a total diversion rate of 77.06 cfs, a total annual maximum diversion volume of 11,579.2 af at the field headgates, and the irrigation of 3,427.0 acres in the place of use described above in a single irrigation season.
18. Approval of Transfer 5450 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.

Dated this 23rd day of July, 1999.


NORMAN C. YOUNG, Administrator

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

Name of applicant William T. Simmons Phone 663-4322

Post office address Terreton, Idaho 83450

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by: Jerome F. Reno
a. Decree to Wood Livestock Co., C. B. Watts & Edward M. Kaufman,
(Name)
in case of Agnes B. Reno, et al vs J. R. Richards, et al
dated Sept. 6, 1922 in Ninth Dist. Court county of Fremont
(Name of court)
b. License No. _____ issued by the Idaho Department of Water Resources
c. Claim No. _____ on file with the Idaho Department of Water Resources
2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant Real Estate
Sale contract dated April 3, 1975 from G. Marshall Bare and H. Margery Bare
See attached copy of recorded notice.
3. Source of water Birch Creek tributary to _____ sinks _____
4. Date of priority 9-10-1882 - 32-0067; 5-10-1886 - 32-0090 & 32-0093; 5-10-1887 - 32-0068;
5-10-1888 - 32-0089, 32-0069, 32-0092 & 32-0061; 5-01-1901 - 32-0091
5. Water is used for the following purposes:
d amount 19.9 for Irrigation purposes from Apr. 1 to Nov. 1
ent amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day - both dates inclusive)
6. Total amount of water under right: a. 19.9 cubic feet per second
&/or
b. _____ acre feet per annum
7. Location of original point of diversion is NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 24
Township 10N Range 29E, B.M., in Clark County
Additional points of diversion, if any NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 24, T. 10N, R. 29E; SW $\frac{1}{4}$ SW $\frac{1}{4}$,
Sec. 29, NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 32, T. 10N, R. 30E(not given in decree but have historically
8. Lands irrigated or place of use: been at the above locations.)

[illegible]

Total number of acres to be irrigated

LAND LIST ATTACHMENT

Description and location of place of use:

TWP.	RANGE	SEC.	NE1/4				NW1/4				SW1/4				SE1/4				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	
10N	30E	19							L. 2 40			L. 3 40	L. 4 40	40					160
10N	30E	32							40	40						40	40		160
10N	30E	29										40	40	40					120
		30													40				40
		32					40	40											80
10N	30E	19														40			40
		30	40	40			40												120
10N	29E	11															40		40
		12										40							40
10N	29E	24				40									40	40	40		160
															</				

CFS

3.20

1.60

2.50

1.60

2.50

0.50

3.20

.40

-1.6-

3.20

18.7

~~19.9~~

Total number of acres irrigated 960

B. DESCRIPTION OF PORTION OF RIGHT FOR WHICH THE CHANGE IS REQUESTED (If the entire right is requested changed, omit part B)

1. Amount of water: a. _____ cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion _____ ¼ _____ ¼, Section _____ Township _____
Range _____, B.M., _____ County
Additional points _____
3. Place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Change in point of diversion _____ 18.7
 - a. Amount of water to be diverted -19.9- c.f.s. &/or _____ acre feet
 - b. Point(s) of diversion NE ¼ NE ¼, Section 14 Township 10N
Range 29E, B.M., Clark County
Additional points NE¼SW¼, Sec. 11, NW¼NE¼, NE¼SE¼, SE¼NE¼, Sec. 24, T. 10N,
R. 29E; SW¼SW¼, Sec. 29, NW¼NW¼, Sec. 32, T. 10N, R. 30E, B.M.
 - c. Description of diverting works 5800 ft. 8" buried mainline with concrete sumps, one
75 Hp. pump, one 100 hp. pump and 16, ½ mile 4" handlines
 - d. Describe the reasons for applying for a change in the point(s) of diversion _____
Upper portion of ranch can be irrigated more efficiently with pumps and
sprinklers system.

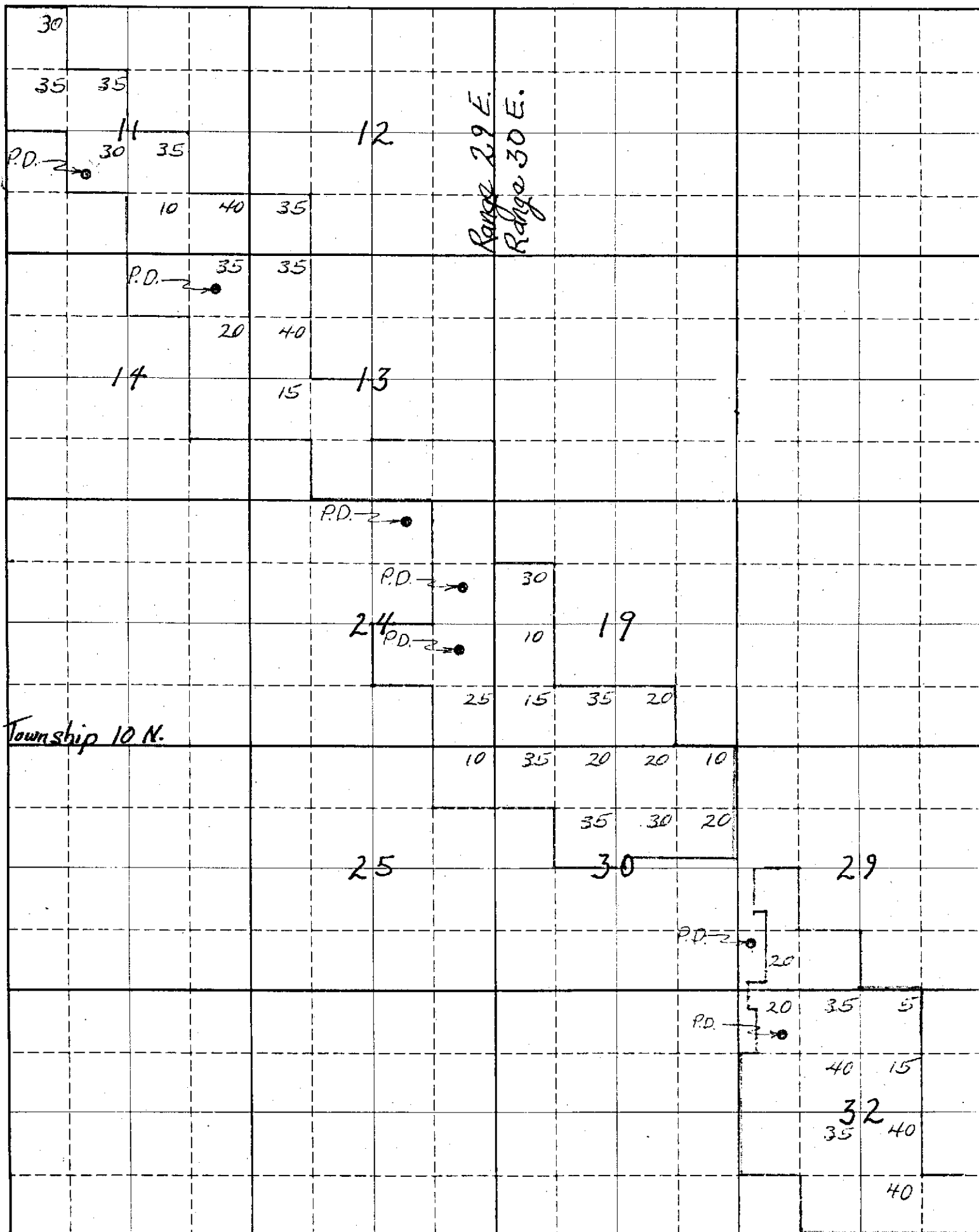
2. Change in place of use
 - a. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
10N	29E	11						30	35	35	30		35			35	10	40	215
		12																	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

* 0.10 cfs of the combination of 32-0091, 32-0092 & 32-0093 has been considered as being appurtenant to Blue Dome pr rty owned by Mrs. Cecil Carlso Said water will not be affected by this transfer

Total number of acres to be irrigated 960

- b. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

3. Remarks _____

I hereby assert that no one will be injured by such change and 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.

Subscribed and sworn to before me this 29 day of September, 1977
Wm T. Simmons
(Signature of applicant)

My commission expires January 5, 1980
James H. Gerard
(Notary public)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 32-0061C, 32-0067, 32-0068, 32-0069, 32-0089, 32-0090, 32-0091, 32-0092 and 32-0093, and said application is hereby APPROVED.

- Approval of said application is subject to the following limitations and conditions:
1. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.
2. Use of water under this right is subject to control by the watermaster of State Water District No. 32D, Birch Creek.
3. The maximum rate of diversion under said right shall not exceed 18.6 cfs.

Witness my hand this 22nd day of February, 19 83

L. Glen Saxton
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by me Date 9-8-77
Prelim. check by LH Fee \$30.00
Receipted by me Date 9-8-77 #8392
Published in The Standard Journal
Pub. dates Sept. 22 & 29, 1977
Watermaster recommendation requested on 9-12-77
Ben Weidling rec'd.
#32-D

Protest filed by W & H Enterprises
Ben Weidling
Copies of protest forwarded by CU
Hearing held by _____ Date _____
Recommended for approval denial
by WRC. Jim Orr

Birch Creek

32-0

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

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

J. B. Richardson,	X
Plaintiff,	X
vs	X
Frank Reno, S. Kuharski, William	X
Goddard, W. A. Tyler, Samuel Goddard,	X
H. Kaufman, W. A. Scott, W. W. Johnson,	X
Thomas Miller, David Miller, Edward	X
Kaufman, and Henry Kaufman,	X
Defendants,	X

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

JUDGMENT AND DECREE.

This cause came on regularly for trial under a stipulation of the respective parties and their attorneys heretofore signed and filed. Messrs J. Ed Smith and W. T. Smith appeared as attorneys for Plaintiff, Messrs. Foyes and Torrell appeared as attorneys for H. Kaufman, Edward Kaufman and Henry Kaufman, Messrs. Quarles and Averitt appeared as Attorneys for W. W. Johnson, S. Kuharski and W. A. Scott, Messrs. Stewart & Dietrich appeared as Attorneys for W. A. Tyler, Thomas Miller and David Miller, Messrs S. C. Winters and R. V. Conier appeared as attorneys for Frank Reno, and Mr. Thomas R. Buser appeared as attorney for Samuel Goddard and William Goddard, and the parties were all present in person.

The Court proceeded to the hearing of the testimony and all the parties with their witnesses having duly testified, which said testimony was taken by the Court Stenographer and the depositions and second testimony having been duly admitted, and the Court having listened to the argument of the respective counsel, the cause was closed and finally submitted to the Court for its consideration and adjudication.

And the Court after due consideration in the premises renders its decision and files its Findings of Facts and Conclusions of Law and orders Judgment to be entered in accordance therewith.

NOW THEREFORE IT IS ORDERED ADJUDGED AND DECREED,

First.

That the defendant W. W. Johnson do have at all times a flow of 150 inches of water, measured under a four inch pressure of the water of Birch Creek a stream situated in Fremont County, State of Idaho, and the

to the use thereof to date from July 22, 1907.

That defendant, Lillian Watts, have no decree to or for any of the waters of said Birch Creek.

That defendant, Birch Creek Irrigation Company, have no decree to any waters of said Birch Creek.

That C. B. Watts also have the use at all times of two and one-half (2½) cubic feet per second of time (one hundred and twenty-five miners' inches), the same being one-half of the decreed right of Ed. M. Henry and N. Kaufman, dating from May 10th, 1888; and one and three-fifths (1 3/5) cubic feet per second of time (eighty miners' inches), the same being one-half of the decreed right of W. W. Johnson, dating from May 10th, 1886; of the waters of Birch Creek; all of said waters to be used upon and become appurtenant to the following described lands, to-wit:

The West Half of the South-east Quarter, the North-east Quarter of the South-west Quarter and the South-east Quarter of the North-west Quarter of Section Twenty-three (23), in Township Ten (10) North of Range Thirty (30) East of Boise Meridian;

That Edward Kaufman have at all times the use of one half of one cubic foot (½) per second of time (twenty-five miners' inches) of the waters of the said Pass Creek, his right to the use of the same to date from the 1st day of May, 1901; that Edward M. Kaufman also have the use at all times of two and one-half (2½) cubic feet per second of time (one hundred and twenty-five miners' inches), the same being one-half of the decreed right of M. Kaufman, Edward M. Kaufman and Henry D. Kaufman, and dating from May 10th, 1888; also one and three-fifths (1 3/5) cubic feet per second of time (eighty miners' inches), the same being one half of the decreed right of W. W. Johnson and dating from May 10th, 1886; said heretofore decreed water and all of it being taken from the main channel of Pass Creek and all of said water to be used upon and become appurtenant to the following described lands.

The South Half of the South-west Quarter of Section Twenty-nine (29), the North Half of the North-west Quarter of Section Thirty-two (32), the North-west Quarter of the South-west Quarter of Section Twenty-nine (29), the North-east Quarter of the South-east Quarter of Section Thirty (30), in Township Ten (10) North of Range Thirty (30) East of the Boise Meridian, in Clark County, State of Idaho, containing two hundred and forty acres.

The South Half of the South-west Quarter of Section Twenty-nine (29), the North Half of the North-west Quarter of Section Thirty-two (32), the North-west Quarter of the South-west Quarter of Section Twenty-nine (29), the North-east Quarter of the South-east Quarter of Section Thirty (30), in Township Ten (10) North of Range Thirty (30) East of the Boise Meridian, in Clark County, State of Idaho, containing two hundred and forty acres.

The South Half of the South-west Quarter of Section Twenty-nine (29), the North Half of the North-west Quarter of Section Thirty-two (32), the North-west Quarter of the South-west Quarter of Section Twenty-nine (29), the North-east Quarter of the South-east Quarter of Section Thirty (30), in Township Ten (10) North of Range Thirty (30) East of the Boise Meridian, in Clark County, State of Idaho, containing two hundred and forty acres.

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**PLEASE SEE WR 31-61 FOR
EXHIBITS AND RELATED
DOCUMENTS FOR BIRCH CREEK
PROTEST**

MEMORANDUM

TO: Files 32-00058/00059/00060/00061C/00061D/00062/00063/00064/00065/00066/
00068/00069/00070A/00070B/00073/00074/00075/00076/00077/00078/
00079/00080/00083/00085/00086/00087/00089/00090A/00091/00092/
00093/00101/00102/02043 & 02045.

FROM: Pam Skaggs²/State Office

SUBJECT: Transfer 5450

DATE: June 29, 1999

Transfer 5450 combines the above referenced rights from Birch Creek and creates a 5798-acre permissible place of use for the newly formed Reno Ditch Company. The rights will have a common diversion point and water will be distributed to shareholders within the service area. This transfer resolves previous disputes among the water users.

Region water right and adjudication staff reviewed these rights and provided initial recommendations. Review of the rights as originally decreed and licensed provided further detail to each right. The total combined use under these rights is limited to a diversion rate of 77.06 cfs, a total annual diversion volume of 11,579.2 af, and the irrigation of 3,427 total acres each season within in the permissible place of use.

Season of use was identified as 04-01 to 11-01 under these rights to be consistent with previous transfers. Recommended conditions include watermaster control, measuring device and lockable controlling works, irrigation overlap, permissible place of use limits, combined right limits, and standard transfer conditions.

MIKROFILMED

1999 2 8 1030

MEMORANDUM

TO: FILE 32-00091

FROM: PAM SKAGGS

RE: TRANSFER # 5450

DATE: 5-17-89

Original Transfer Application, Form and correspondence
regarding the above referenced Transfer is located within
file # 32-00058.

MICROFILMED

JUL 28 1999

MEMORANDUM

TO: FILE 32-00091
FROM: PAM SKAGGS CP
RE: TRANSFER # 3553
DATE: 7/16/93

Original Transfer Application, Form and correspondence
regarding the above referenced Transfer is located within
file # 32-00067/C.

MICROFILMED

JUL 23 1993



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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 10, 1992

RE: Transfers filed by Birch Creek Ranches and Mac and Betty Wagoner; Application for Amendment by Birch Creek Ranches - Nos. 32-00061, 32-00067, 32-00068, 32-00069, 32-00089, 32-00090, 32-00091, 32-00092, 32-00093, 32-00102

Dear Interested Party:

I spoke to George Peterson, who represents D & D Enterprises in the above disputed matters. Mr. Peterson stated that he had visited with Blair Grover, attorney for Newman, and Kent Foster, attorney for Sorenson. He stated that because of the uncertainty about the existing condition of Birch Creek because of the liner failure, some additional delay in the hearing would be helpful.

I told Mr. Peterson that I am willing to delay the hearing until there is some physical certainty about the delivery of water in Birch Creek. I do not intend to let these applications go unaddressed for years in the files of the Department, however.

I will defer setting the hearing for an additional six (6) months. On or about January 1, 1993, I will again call it up for review. If there is any change in the status prior to that time, I would appreciate being informed.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

RECEIVED

JUL 14 1992

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of July, 1992, I mailed a true and correct copy of the attached letter, to the following individuals:

Breck Barton
P.O. Box 100
Rexburg, ID 83440

Alva Harris
171 S. Emerson
Shelley, ID 83274

George Peterson
485 "E" Street
Idaho Falls, ID 83402

Kent Foster
P.O. Box 50130
Idaho Falls, ID 83405

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

Don Shenton
Dubois, ID 83423

Blair Grover
P.O. Box 36
Rigby, ID 83442-0036

IDWR - Eastern Region


JENNIFER SEIFERT, Secretary
Department of Water Resources



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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

June 25, 1992

<address>

RE: Transfers filed by Birch Creek Ranches and Mac and Betty & Wagoner; Application for Amendment by Birch Creek Ranches

Dear <sal>:

Parties to the above protested applications for transfer and amendment have been negotiating a possible settlement of the applications for transfer and application for amendment. I have not heard of any agreement. I recall seeing a letter, signed by Breck Barton, which set a deadline for completion of certain activity, although I cannot find it in my files.

This letter is an inquiry about the status of the negotiations, and the desires of the parties regarding a hearing. I do not want this matter to languish in the files of the Department forever without resolution.

I will set this matter for hearing at the end of thirty (30) days. If you are unavailable during certain time periods, I suggest you contact me prior to the end of the thirty days. If the protests are resolvable in some other way, I would appreciate being informed.

Respectfully,

A handwritten signature in cursive script that reads 'Gary Spackman'.

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc: Eastern Region

ORIGINAL FILED

JUN 27 1992

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of June, 1992, I mailed a true and correct copy of the attached letter, postage prepaid, to the following individuals:

Breck Barton
P.O. Box 100
Rexburg, ID 83440

Alva Harris
171 S. Emerson
Shelley, ID 83274

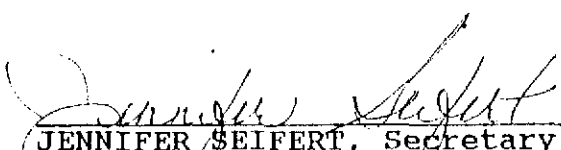
George Peterson
485 "E" Street
Idaho Falls, ID 83402

Kent Foster
Attorney at Law
P.O. Box 50130
Idaho Falls, ID 83405

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

Don Shenton
Dubois, ID 83423

Blair Grover
P.O. Box 36
Rigby, ID 83442-0036


JENNIFER SEIFERT, Secretary
Department of Water Resources



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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 1, 1991

Breck Barton
P.O. Box 100
Rexburg, ID 83440

RE: Transfers filed by Birch Creek Ranches and Mac and Betty &
Wagoner; Application for Amendment by Birch Creek Ranches

Dear Mr. Barton:

The parties to the above matters have represented to me that they were productively negotiating a settlement. As a result, I have not sent a notice of hearing for the second week of November. I understand that the parties are still negotiating a settlement and that they will shortly know whether an agreement can be reached. I will defer setting the matter for hearing until December 1, 1991. If I have not received a stipulation for settlement, I will inquire about the use of the prior record, and set the matter for hearing.

I hope the negotiation is productive.

Sincerely,

A handwritten signature in cursive script that reads 'Gary Spackman'.

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

RECORDED
NOV 1 1991



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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 1, 1991

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

RE: Transfers filed by Birch Creek Ranches and Mac and Betty &
Wagoner; Application for Amendment by Birch Creek Ranches

Dear Mr. and Mrs. Wagoner:

The parties to the above matters have represented to me that they were productively negotiating a settlement. As a result, I have not sent a notice of hearing for the second week of November. I understand that the parties are still negotiating a settlement and that they will shortly know whether an agreement can be reached. I will defer setting the matter for hearing until December 1, 1991. If I have not received a stipulation for settlement, I will inquire about the use of the prior record, and set the matter for hearing.

I hope the negotiation is productive.

Sincerely,

A handwritten signature in cursive script, reading 'Gary Spackman'.

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

ENCLOSURE

11/1/91



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

CECIL D. ANDRUS
GOVERNOR

R. KETHI HIGGINSON
DIRECTOR

November 1, 1991

Alva A. Harris
171 S. Emerson
Shelley, ID 83274

RE: Transfers filed by Birch Creek Ranches and Mac and Betty &
Wagoner; Application for Amendment by Birch Creek Ranches

Dear Ms. Harris:

The parties to the above matters have represented to me that they were productively negotiating a settlement. As a result, I have not sent a notice of hearing for the second week of November. I understand that the parties are still negotiating a settlement and that they will shortly know whether an agreement can be reached. I will defer setting the matter for hearing until December 1, 1991. If I have not received a stipulation for settlement, I will inquire about the use of the prior record, and set the matter for hearing.

I hope the negotiation is productive.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

RECEIVED

NOV 1 1991



State of Idaho
DEPARTMENT OF WATER RESOURCES

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CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 1, 1991

Don Shenton
Dubois, ID 83423

RE: Transfers filed by Birch Creek Ranches and Mac and Betty &
Wagoner; Application for Amendment by Birch Creek Ranches

Dear Mr. Shenton:

The parties to the above matters have represented to me that they were productively negotiating a settlement. As a result, I have not sent a notice of hearing for the second week of November. I understand that the parties are still negotiating a settlement and that they will shortly know whether an agreement can be reached. I will defer setting the matter for hearing until December 1, 1991. If I have not received a stipulation for settlement, I will inquire about the use of the prior record, and set the matter for hearing.

I hope the negotiation is productive.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

MAILED 11/1/91

NOV 1 1991



State of Idaho

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Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 1, 1991

George Petersen
485 "E" Street
Idaho Falls, ID 83402

RE: Transfers filed by Birch Creek Ranches and Mac and Betty &
Wagoner; Application for Amendment by Birch Creek Ranches

Dear Mr. Petersen:

The parties to the above matters have represented to me that they were productively negotiating a settlement. As a result, I have not sent a notice of hearing for the second week of November. I understand that the parties are still negotiating a settlement and that they will shortly know whether an agreement can be reached. I will defer setting the matter for hearing until December 1, 1991. If I have not received a stipulation for settlement, I will inquire about the use of the prior record, and set the matter for hearing.

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Sincerely,

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GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

RECORDED
NOV 1 1991



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Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 1, 1991

Blair Grover
P.O. Box 36
Rigby, ID 83442-0036

RE: Transfers filed by Birch Creek Ranches and Mac and Betty &
Wagoner; Application for Amendment by Birch Creek Ranches

Dear Mr. Grover:

The parties to the above matters have represented to me that they were productively negotiating a settlement. As a result, I have not sent a notice of hearing for the second week of November. I understand that the parties are still negotiating a settlement and that they will shortly know whether an agreement can be reached. I will defer setting the matter for hearing until December 1, 1991. If I have not received a stipulation for settlement, I will inquire about the use of the prior record, and set the matter for hearing.

I hope the negotiation is productive.

Sincerely,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

RECEIVED

NOV 1 1991



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

CECIL D. ANDRUS
GOVERNOR

R. KETH HIGGINSON
DIRECTOR

November 1, 1991

Kent Foster
Attorney at Law
P.O. Box 50130
Idaho Falls, ID 83405

RE: Transfers filed by Birch Creek Ranches and Mac and Betty &
Wagoner; Application for Amendment by Birch Creek Ranches

Dear Mr. Foster:

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A handwritten signature in cursive script that reads "Gary Spackman".

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 18, 1991

Kent Foster
Attorney at Law
P.O. Box 50130
Idaho Falls, ID 83405

RE: Transfers Filed by Birch Creek Ranches and Mac and Betty
Wagoner

Dear Mr. Foster:

I have checked the tapes recorded during the prior hearing for Birch Creek Ranches' application for transfer. The speed of the tapes is 1.2 revolutions per minute. The tapes cannot be recorded and played back in a normal cassette recorder.

The tapes and the exhibits are now at our Eastern Regional office in Idaho Falls. The tapes and exhibits will remain in our Eastern regional office until September 5, 1991, for your review.

The Department will transcribe the record for \$2.00 a page. Any requests for transcription should be received by August 1, 1991.

Pursuant to our conversations at the conference, I will expect a written agreement or disagreement to use the prior record created at the earlier hearing.

Sincerely,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

RECORDED
INDEXED



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 18, 1991

Breck Barton
Attorney at Law
P.O. Box 100
Rexburg, ID 83440

RE: Transfers Filed by Birch Creek Ranches and Mac and Betty
Wagoner

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Sincerely,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

MAILED 11
JUL 19 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 18, 1991

Blair Grover
Attorney at Law
P.O. Box 36
Rigby, ID 83442-0036

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Wagoner

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Sincerely,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

ENCLOSURE

12 18 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 18, 1991

George Petersen
Attorney at Law
485 "E" Street
Idaho Falls, ID 83402

RE: Transfers Filed by Birch Creek Ranches and Mac and Betty
Wagoner

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Pursuant to our conversations at the conference, I will expect a written agreement or disagreement to use the prior record created at the earlier hearing.

Sincerely,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

MEMO TO FILE:

SEE FILE # 32-0061C FOR TRANSFERS FILED ON THE FOLLOWING WATER RIGHTS:

32-0068
32-0069
32-0089
32-0090
32-0091
32-0092
32-0093
32-0101

Trans # 3828

FROM Sharla

DATE 10/11/89

TO Files 32-0067/0068/0069/0089/0090/0091/0092/0093

SUBJECT Trans. 3553

See file 32-0061 for all correspondence regarding the above referenced transfer.

SIGNATURE

INTER-DEPARTMENT MEMO --- 1

FROM Kay Walker

DATE 2/11/1983

TO Files 32-0067, 32-0068, 32-0069, 32-0089, 32-0090, 32-0091, 32-0092 and 32-0093

SUBJECT Transfer No. 2165

See Water Right File No. 32-0061 for all correspondence regarding the above referenced transfer.

SIGNATURE