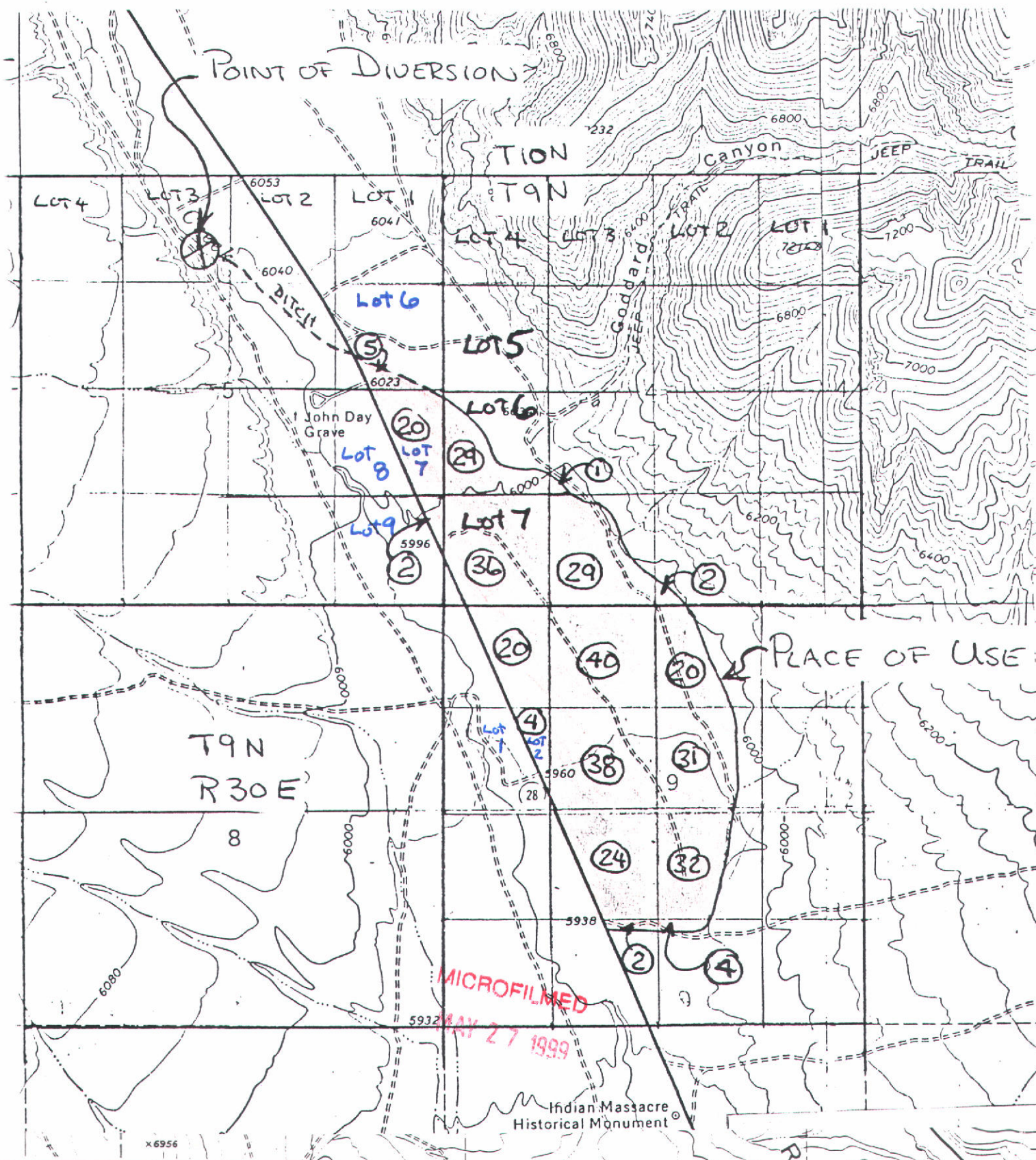
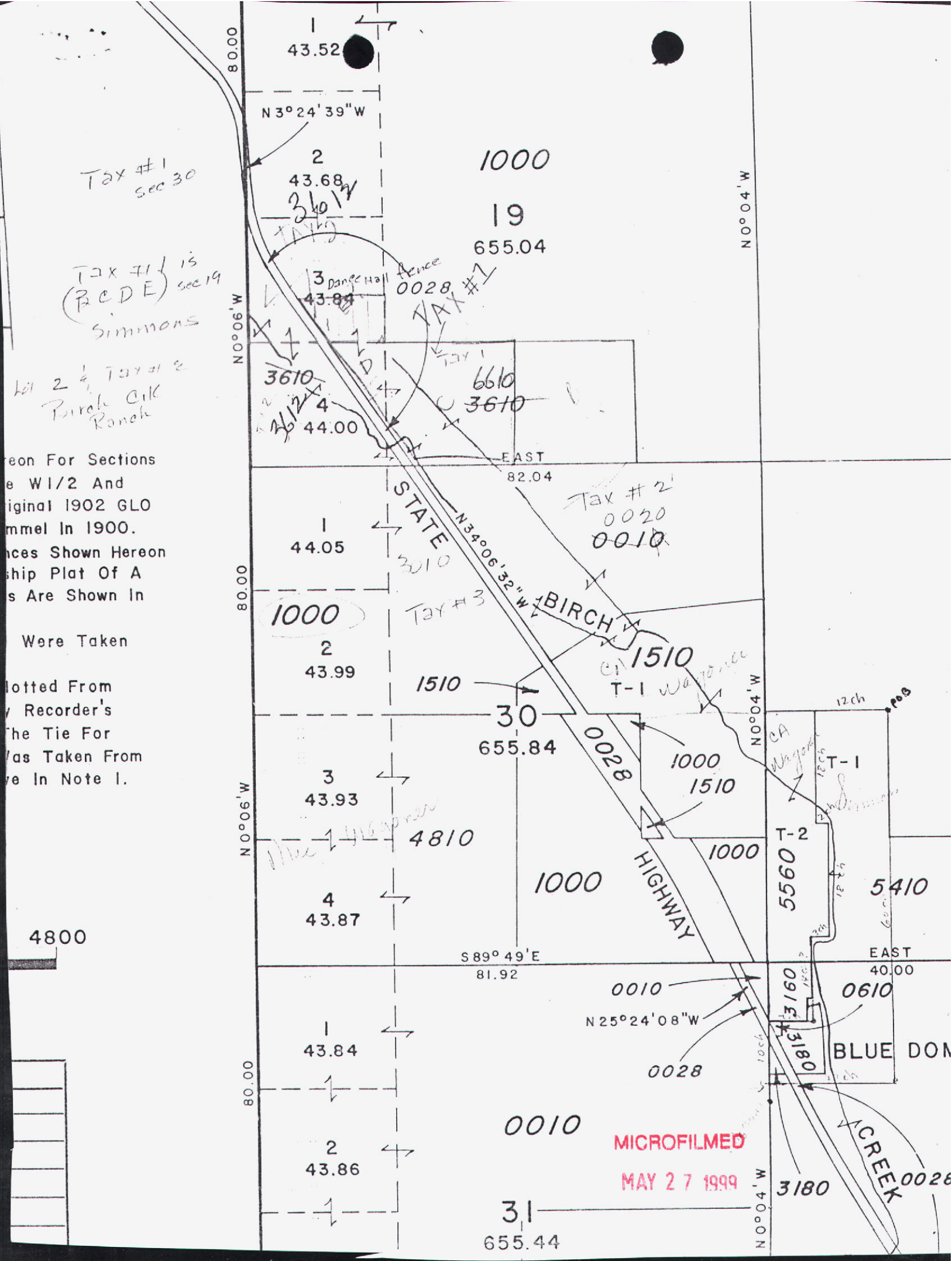


STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

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.





43.52

N 3° 24' 39" W

2

43.68

1000

19

655.04

N 0° 04' W

Tax #1
Sec 30

Tax #11 is
(BCDE) Sec 19
Simmons

Lot 2 1/2, Tax #12
Birch Creek
Ranch

3

43.84

Dance Hall

Fence

0028

Tax #1

3610

4

44.00

6610

3610

EAST

82.04

44.05

1000

2

43.99

1510

30

655.84

3

43.93

4810

4

43.87

1000

HIGHWAY

1000

1510

1000

5560

5410

0610

0010

0028

0010

0028

0010

0028

0010

0028

0010

0028

4800

S 89° 49' E

81.92

N 25° 24' 08" W

0028

0010

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31

655.44

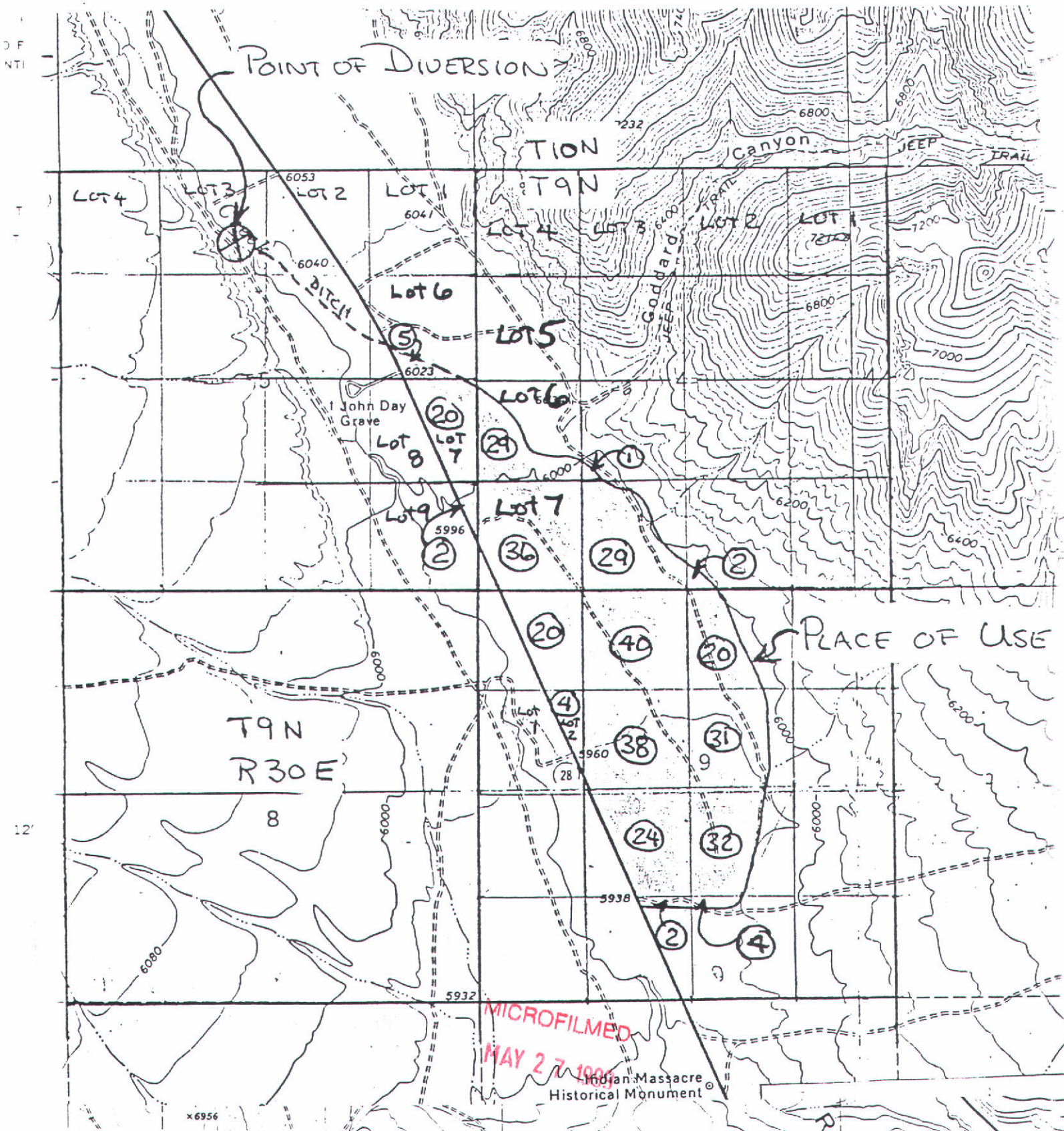
BLUE DOM

CREEK

0028

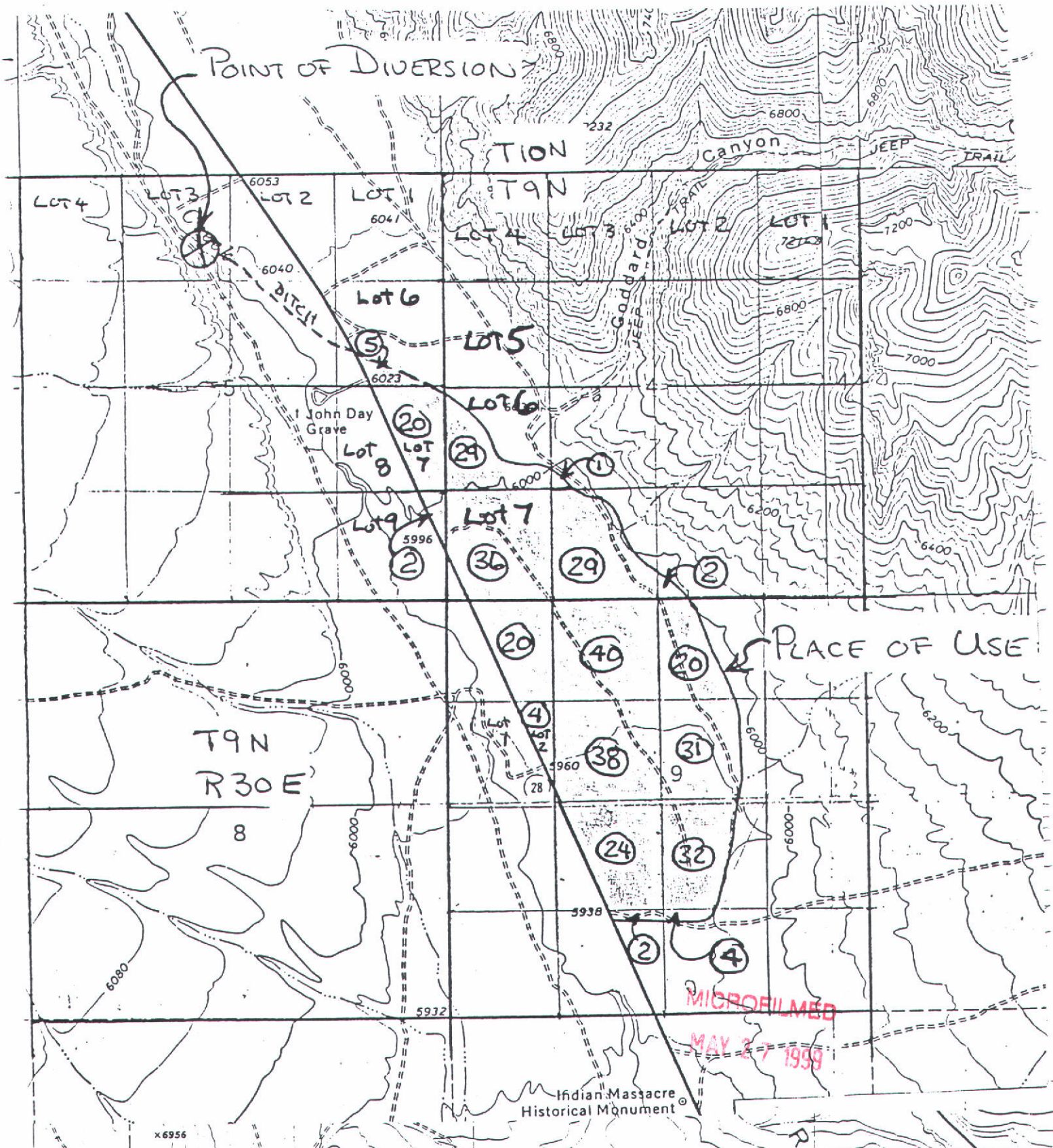
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

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.



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.



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	04/15 to 10/15	3.20 CFS	1161.5 AF
Priority: 09/10/1882			
Right No. 32-00090B :			
IRRIGATION	04/15 to 10/15	0.80 CFS	290.4 AF
Priority: 05/10/1886			
	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

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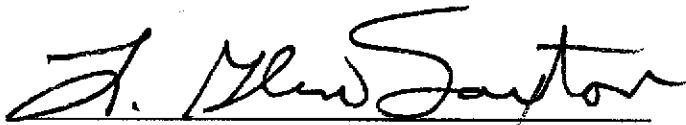
TRANSFER NO. 3827
WATER RIGHT NO(S). 32-00067/32-00090B

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

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MAY 27 1999

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR) TRANSFER 3827 IN THE NAME OF BIRCH) CREEK RANCHES, INC.)	)	PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources (department), as a result of the filing of an amended application for transfer with the department, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On February 12, 1991, Birch Creek Ranches, Inc. (Birch Creek) filed application for transfer No. 3827 (application) with the department proposing to change the point of diversion and place of use of a total of 4.0 cfs of the water of Birch Creek. The rights sought for transfer are identified as all of right No. 32-00067 at a rate of 3.2 cfs and one-half of right No. 32-00090 in the amount of 0.80 cfs.

2. The application for transfer seeks approval to use the water rights on lands owned by Mac Wagoner and Betty Wagoner (Wagoner) as follows:

Ident No:	32-00067
Priority:	September 10, 1882
Rate of div:	3.2 cfs - irrigation - Apr 1 to Nov 1
	0.8 cfs - stockwater - Mar 1 to Dec 1
Pt of div:	NENW Sec 5, T9N, R30E, B.M.
Place of use:	339 acres in parts of Sections 4,5 and 9 T9N, R30E, B.M.

Ident No:	32-00090
Priority:	May 10, 1886
Rate of div:	0.8 cfs
Pt of div:	NENW Sec 5, T9N, R30E, B.M.
Place of use:	339 acres in parts of Sections 4,5 and 9 T9N, R30E, B.M.

3. The application was filed in support of a water right exchange agreement between Birch Creek and Wagoner. The application was advertised as required by statute and was protested. On November 29, 1993, the protestants filed a stipulation agreeing to the bifurcation of a contested case involving transfer of Birch Creek water rights and dropping the protests against approval of transfer No. 3827 in accordance with terms of the stipulation.

ORDER - Pg 1

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4. Ownership of water right No. 32-00067 and one-half of water right No. 32-00090 is represented by a Quitclaim Deed dated September 20, 1994 from Birch Creek to Wagoner.

5. Wagoner has used the rights as proposed in the application for approximately five (5) years.

6. In January 1994, the department chose not to bifurcate consideration of the application from other pending protested applications on Birch Creek.

7. In January 1996, the protestants withdrew their protests.

8. On February 28, 1997, Breck Barton, attorney for Mac Wagoner asked the department to approve amended transfer No. 3827.

9. On March 7, 1997, the department requested input from Birch Creek relative to the Barton request to act on transfer No. 3827. Birch Creek subsequently asked the department to withhold action on the application pending review of channel losses which might be associated with other water rights of Birch Creek.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code; ...

2. Upon further review and consideration of this matter, the department determines that it is appropriate to act upon application No. 3827 which is not now protested.

3. The proposed changes will not injure other water rights.

4. The proposed changes do not constitute an enlargement in use of the original rights.

5. The proposed changes do not conflict with the local public interest.

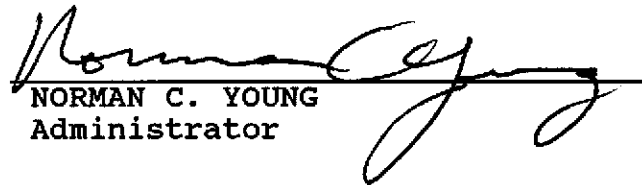
6. The application is consistent with the conservation of water resources within Idaho.

7. The department should approve the application with certain conditions and limitations.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Application for Transfer No. 3827 involving water right Nos. 32-00067 and 32-00090B is **APPROVED** with the conditions and limitations shown on the attached Transfer of Water Right document.

Dated this 21st day of MARCH, 1997.


NORMAN C. YOUNG
Administrator

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of March, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the following:

Birch Creek Ranches, Inc.
c/o HOLDEN KIDWELL HAHN
& CRAPO
P.O. Box 50130
Idaho Falls, ID 83405


JULIE L. YARBROUGH
Senior Secretary

Page 1 of 8STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 3827~~AMENDED~~ APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

FEB 18 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

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. 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</u> | <u>05/10/1886</u> | <u>.8 cfs</u> | <u>Irrigation</u> | <u>04/01</u> to <u>11/01</u> |
| | | | | to _____ |
2. Total amount of water being transferred 4.0 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Birch Creek tributary to Sinks
4. Point(s) of Diversion:

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

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	
9N	30E	4									1	29	36	29			2		97
												L6	L7						
		5													20			2	27
		9		20	31		40	20	4	38	24			2		32	4		215

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Total acres 339

PART 1

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

Witness my hand this _____ day of _____, 19 _____

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MAY 27 1999

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

8. 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	

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MAY 27 1999

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 _____ (date)

2. Point(s) of Diversion:

[illegible]

3. Lands irrigated or place of use:

[illegible]

Total acres

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

2. Point(s) of Diversion:

[illegible]

3. Lands irrigated or place of use:

[illegible]

MAY 27 1999
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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	

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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 cts

Irregular

10/70

10/11

(c/s/ac-11)

for

purposes from

01-

(c/s/ac-ft)

for -

purposes from

01-

(cfs/ac-ft)

પ્રવચન

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

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

[illegible]

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 cts

IDENTIFICATION

10/70

10/11

(c)S/ac-ft)

for -

purposes from

01-

(cfs/ac-ft)

for

purposes from

01-

(cts/ac-ft)

पुनः

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

3. Lands irrigated or place of use: See Attachment No. 1

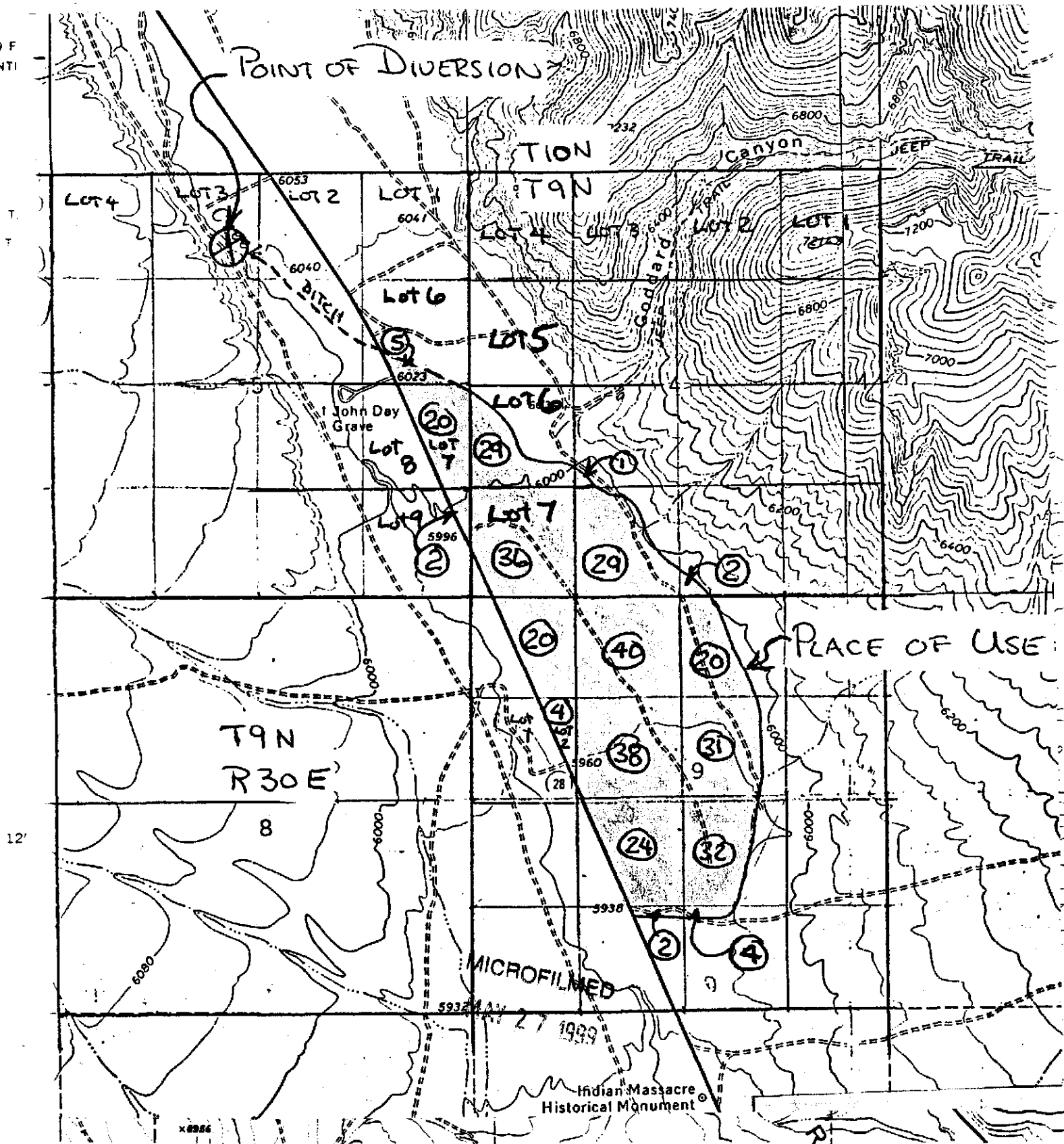
[illegible]

Total acres

MAY 27 1999
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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.



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Copy of transfer sent to lien holder

rec'd.

by ROC

Watermaster recommendation requested on

Recommended for ☒ approval ☐ denial

Pub. dates 4-18 & 25-91

Published in Statewide

Received by HWS E015683

Date 2-12-91

Prelim. check by KW

Fee \$50.00

Date 2-12-91

Received by HWS

Protest filed by

Transfer contains _____ pages and _____ attachments

FOR DEPARTMENT USE ONLY

My commission expires

2-19-91

(Notary Public)

John G. Simmons

Subscribed and sworn to before me this

6th

day of

February

(Signature of Applicant)

[Signature]

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

of the original right. The information contained in this application is true to the best of my knowledge.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use

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

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

B. CHANGES IN NATURE OF USE

PART 3

Period of Use

Hours/days/year

Amount
(cfs/ac-ft)

New Nature of Use

Transfer No.

Page 8 of 8

QUITCLAIM DEED

THIS INDENTURE, made this 20th day of September, 1994, between BIRCH CREEK RANCHES, INC., hereinafter referred to as "FIRST PARTY", and MAC WAGONER and BETTY WAGONER, husband and wife, hereinafter referred to as "SECOND PARTY", whose mailing address is:

Box 296
Dubois, Idaho 83423

WITNESSETH:

THAT FOR AND IN CONSIDERATION of ONE DOLLAR (\$1.00) and other good and sufficient consideration, receipt whereof is hereby acknowledged, FIRST PARTY, having been duly authorized by resolution of its Board of Directors, does by these presents hereby release, remise and forever quitclaim unto SECOND PARTY and their heirs, assigns or successors in interest, all of FIRST PARTY's right, title and interest in and to the following described water rights:

**IDAHO DEPARTMENT
OF WATER RESOURCES
IDENTIFICATION NO.**

**AMOUNT
IN CFS**

**PRIORITY
DATE**

SOURCE

32-0067

3.2 cfs

09/10/1882

Birch Creek

A portion of 32-0090

.8 cfs

05/10/1886

Birch Creek

The season of use for said water rights shall hereafter be from April 1st of each year to and including October 15th of the same year; provided, however, that SECOND PARTY 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

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MAY 27 1999

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. Regardless of the date diversions under such rights commence, and regardless of whether water is or is not diverted under such rights 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.

TO HAVE AND TO HOLD said water rights unto said SECOND PARTY, their heirs, assigns or successors in interest forever.

IN WITNESS WHEREOF, FIRST PARTY has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary pursuant to said resolution, the day and year first above written.

BIRCH CREEK RANCHES, INC.

By: [Signature]
Its: President

(Corporate Seal)

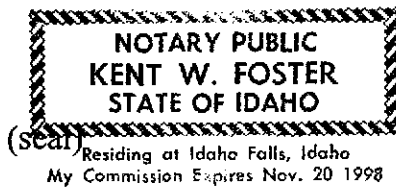
Attest: [Signature]
Its: Secretary

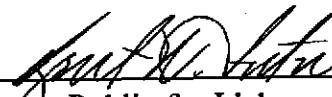
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MAY 27 1999

STATE OF IDAHO)
)ss.
County of Bonneville)

On the 20th day of September, in the year 1994, before me, the undersigned, a notary public in and for said State, personally appeared Ted S. Sorenson and Gayle A. Sorenson, known or identified to me to be the President and Secretary of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.





Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 11/20/98

G:\WPDATA\KWF\6936\00WAG02.QTD:sjw

MICROFILMED
MAY 27 1999

NOTICE OF CONTRACT OF SALE

Notice is hereby given, that by written agreement dated the 22 day of March, 1989, the undersigned, WILLIAM T. SIMMONS, individually and as personal representative of the estate of Theola Simmons, SELLER, has agreed to sell the following described property to BIRCH CREEK RANCHES, INC., an Idaho corporation, BUYER, which has agreed to purchase said property. The property being sold under the terms of said written Contract of Sale is described as follows, to-wit:

TRACT 1:

Township 10 North, Range 29 East, Boise Meridian, Clark County, Idaho

Section 11: W1/2 NW1/4

Township 10 North, Range 30 East, Boise Meridian, Clark County, Idaho

Section 29: SE1/4 SW1/4

Section 32: NE1/4 NW1/4
S1/2 NW1/4
N1/2 SW1/4
SE1/4 SW1/4
W1/2 E1/2
SE1/4 SE1/4

ALSO, a tract lying within Sections 29 and 32, described as follows: Beginning at the NE Corner of the NW 1/4 SW 1/4 of Section 29, thence West 12 chains; thence South 18 chains; thence East 2 chains; thence South 18 chains; thence West 3 chains; thence South 14 chains; thence West 7 chains; thence South 10 chains to the SW Corner of the NW 1/4 NW 1/4 of Section 32, thence East 20 chains; thence North 60 chains to the place of beginning.

EXCEPTING THEREFROM: Beginning at a point of the Section Line between Sections 31 and 32 which is 12 chains South of corner common to Sections 29, 30, 31 and 32, Township 10 North, Range 30 East, Boise Meridian; thence S0°04'E along said Section line for 6 chains; thence East 9 chains; thence N 1°50'W for 8 chains and 50 links; thence N9°40'W for 3 chains and 48 links; thence N7°44'E for 2 chains and 23 links; thence N55°40'W for 1

FILED FOR RECORD AT 34 MINUTES PAST 9 O'CLOCK A.M. THIS 24
DAY OF March 1989 AND RECORDED AS MICROFILM NO. 43322
RECORDS OF CLARK COUNTY, IDAHO JOANN S. TAVENNER
RECORDER

43322
SEE 2100
MICROFILMED

MAY 27 1999

BY Don Wilson LAT
DEPUTY

chain and 75 links; thence S0°04'E for 7 chains and 10 links; thence West 5 chains; thence S0°04'E for 2 chains; thence West for 2 chains to the place of beginning.

TRACT 2:

Township 10 North, Range 29 East, Boise Meridian, Clark County, Idaho

Section 11: SE1/4 NW1/4
NE1/4 SW1/4
NW1/4 SE1/4
S1/2 SE1/4

Section 12: SW1/4 SW1/4

Section 13: W1/2 NW1/4
N1/2 SW1/4
SE1/4 SW1/4
S1/2 SE1/4

Section 14: N1/2 NE1/4
SE1/4 NE1/4
NE1/4 SE1/4

Section 24: E1/2 NE1/4
N1/2 SE1/4
SE1/4 SE1/4

EXCEPTING THEREFROM the following described three tracts situate in the E1/2 NE1/4.

TRACT 1: Beginning at a point on the North boundary of the SE 1/4 NE 1/4 of Section 24, on the West boundary of Highway No. 28 from which the NE Section Corner of Section 24 bears S89°56'E 160.0 feet and N0°06'W for a distance of 1320 feet; thence N89°56'W for a distance of 250 feet; thence S15°45'E for a distance of 498.7 feet; thence S89°56'E for a distance of 250 feet to a point on the West right-of-way of Highway No. 28, (with a tie to Section line, S89°56'W 25.6 feet; thence along said Section line for a distance of 1800.0 feet to said NE Section corner of Section 24); thence along the West boundary of Highway No. 28 which is a 4° curve to the left to the point of beginning.

TRACT 2: Beginning at a point on the South boundary of the NE1/4 NE1/4 of Section 24, on the West boundary of Highway No. 28 (from which the NE Section Corner of Section 24 bears S89°56'E 160 feet and N0°06'W for a distance of 1320 feet;) thence N89°56'W for a distance of 250 feet; thence N1°44'W for a distance of 115.0 feet; thence N33°30'E for a distance of 51 feet; thence N68°34'E for a distance of 111.7 feet; thence South along the West right-of-way boundary of Highway No. 28 along a 4° curve to the point of beginning.

TRACT 3: Commencing at the NE Corner of said Section 24, thence S00°01'26"W along the East line of said Section a distance of 1800.00 feet; thence N89°48'34"W a distance of 23.53 feet to a point on the Westerly right-of-way line of Idaho State Highway No. 28, said point being the True Point of Beginning; thence continuing N89°48'34"W a distance of 170.00 feet, more less to the centerline of Birch Creek; thence Southerly along said centerline of Birch Creek on the following courses: S33°25'27"W 75.92 feet; S13°20'06"E 138.74 feet; South 50°11'40"E 23.43 feet; S14°53'11"E 163.49 feet; S04°16'33"E 107.30 feet; thence S90°00'00"E a distance of 140.64 feet to a point on the Westerly right-of-way line of Idaho State Highway No. 28; thence N03°22'00"W along said Westerly right-of-way line, a distance of 434.12 feet to a Brass Cap Monument marking a point of curvature Station 2532+65.8 Back 2532+66.2 Ahead; thence Northwesterly along said Westerly right-of-way line on a 04°08'40" Degree curve to the left, having a central angle of 01°50'47", a radius of 1382.50 feet, a chord bearing of N04°17'23"W, a chord distance of 44.55 feet, and a arc distance of 44.55 feet to the True Point of Beginning.

Section 25: NE1/4 NE1/4

MAY 27 1999

Township 10 North, Range 30 East, Boise Meridian, Clark County, Idaho

Section 19: Lots 2, 3, and 4
 SE1/4 SW1/4
 SW1/4 SE1/4

Section 30: Lot 1
 E1/2 NW1/4
 NE1/4

EXCEPTING THEREFROM: Beginning at the Quarter Section Corner common to Section 29 and 30, Township 10 North, Range 30 East, Boise Meridian, where a stone is placed marked "1/4" lies; thence along the center line of Section 30, S89°58'W 40 chains; thence N0°02'W 4.86 chains; thence N57°28'E 20.72 chains; thence N83°53'E 22.65 chains; thence S0°04'E along the Section line common to Sections 29 and 30, 18.38 chains to the point of beginning.

ALSO EXCEPTING THEREFROM the following described property in Sections 19 and 30 of Township 10 North Range 30 East Boise Meridian, hereinafter referred to as the "Gray Place", to-wit:

All of the North Half of Section 30, Township 10 North, Range 30 East lying East of the Highway 28 right-of-way. The Southwest 1/4 of the Southeast 1/4, Section 19, Township 10 North, Range 30 East; the Southeast 1/4 of the Southwest 1/4 of Section 19, Township 10 North, Range 30 East lying East of Highway 28 right-of-way; Lot 4 of Section 19, Township 10 North, Range 30 East lying East of Highway 28 right-of-way. That portion of Lot 3 lying East of Highway 28 right-of-way and South of a line running East from the intersection of the highway right-of-way and the existing fence line (known as the Dance Hall field fence). Including any water rights to Miller Spring located in Section 19, Township 10 North, Range 30 East, Boise Meridian. EXCEPTING therefrom the following: Beginning at the Quarter Section Corner common to Section 29 and 30, Township 10 North, Range 30 East, Boise Meridian, where a stone is placed marked "1/4" lies; thence along the center line of Section 30, S89°58'W 40 chains; thence N0°02'W 4.86 chains; thence N57°28'E 20.72 chains; thence N83°53'E 22.65 chains; thence S0°04'E along the Section line common to Sections 29 and 30, 18.38 chains to the point of beginning.

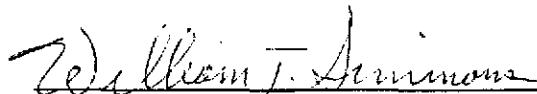
MAY 27 1993

TOGETHER WITH THE FOLLOWING:

1. All water rights which arise from Birch Creek which are appurtenant to the Gray Place. The Seller is by this instrument retaining title to the Gray Place and any water rights in Miller Spring located on the Gray Place. Provided, however, the Seller is transferring by this instrument to the Buyer all water rights arising from Birch Creek which are appurtenant to the Gray Place.
2. All State of Idaho, Bureau of Land Management and United States Forest Service Grazing privileges and permits which are appurtenant to the above described property and the Gray Place, or granted in connection with the use, possession or ownership of such property.
3. All contract rights and rights to payment pertaining to the above described property (including the Gray Place) under the Conservation Reserve Program administered by the United States Department of Agriculture and the Agricultural Stabilization and Conservation Committee.
4. All and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including, but not limited to, all buildings, fences, headgates situate thereon, and all mineral rights, water rights and ditch rights, and the reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the property, as well in law as in equity, of Seller.

It is understood and agreed that this instrument is for the purpose of giving notice of the above mentioned Contract of Sale.

IN WITNESS WHEREOF, the parties have hereunto set their hands the 22nd day of March, 1989.



William T. Simmons, individually

5 - MICR
NOTICE OF CONTRACT OF SALE
NOTIFIED

MAY 27 1999

William T. Simmons

William T. Simmons, as personal
representative of the estate
of Theola Simmons

BIRCH CREEK RANCHES, INC.

William T. Simmons Pres.

William T. Simmons, President

STATE OF IDAHO)
County of Bonanza)ss.

On the 22nd day of March, in the year of 1989, before
me, the undersigned, a Notary Public, in and for the State of
Idaho, personally appeared William T. Simmons, known or
identified to me to be the person whose name is subscribed to
the within instrument and acknowledged to me that he executed
the same.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal, the day and year in this certificate
first above written.

(seal)

Cliff A. Hume
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 12/6/92

MICROFILM OF CONTRACT OF SALE
6 - NOTARIAL

MAY 27 1999

STATE OF IDAHO)
County of Bonneville) ss.
)

On the 22 day of March, in the year of 1989, before me, the undersigned, a Notary Public, in and for the State of Idaho, personally appeared William T. Simmons, known or identified to me to be the personal representative of the estate of Theola Simmons, and subscribed to the within instrument and acknowledged to me that he executed the same as said personal representative.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(seal)



Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 12/6/92

STATE OF IDAHO)
County of Bonneville) ss.
)

On the 22 day of March, in the year of 1989, before me, the undersigned, a Notary Public, in and for the State of Idaho, personally appeared William T. Simmons, known or identified to me to be the President of Birch Creek Ranches, Inc., an Idaho corporation, which corporation subscribed to the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(seal)



Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 12/6/92

#8180

MP459/sam

MICROFILMED

NOTICE OF CONTRACT OF SALE

MAY 27 1999

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,

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MAY 27 1999

ATTACHMENT NO. 1

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

48 for 48s
MEMORANDUM OF AGREEMENT

MICROFILMED

MAY 27 1999

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.

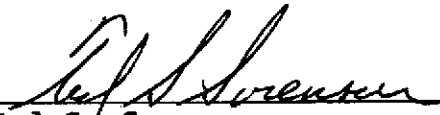
6. Sorensons agree that in addition to the irrigation water rights listed herein Wagoners will be entitled to divert up to 40 miner's inches (.8 cfs) of the water right which Sorensons will transfer to them which is Right No. 32-0067 for

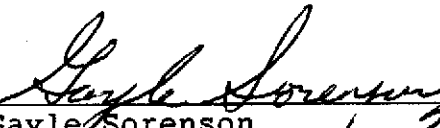
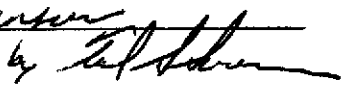
MICROFILMED
MEMORANDUM OF AGREEMENT
MAY 27 1999

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

MICROFILMED
4 - MEMORANDUM OF AGREEMENT

MAY 27 1999

BIRCH CREEK RANCHES, INC.

By: _____

[Signature]

Approved as to Form and Content By:

[Signature]
Donald L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO

[Signature]
Mac Wagoner

[Signature]
Betty Wagoner

Approved as to Form and Content By:

[Signature]
Breck H. Barton, Esq.
BARTON & ASSOCIATES

#5491.00
8029h/srr

MICROFILMED
5 - MAY 27 1999
MEMORANDUM OF AGREEMENT

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	

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MAY 27 1999

ATTACHMENT NO. 2

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

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MAY 27 1999

ATTACHMENT NO. 3

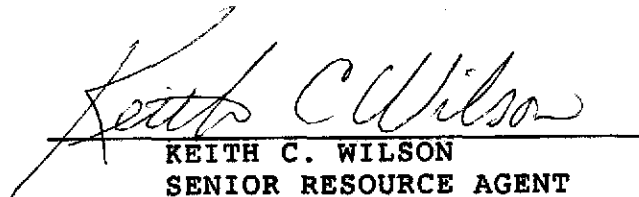
FROM: KEITH C. WILSON - EASTERN

27 MARCH 1991

TO: TRANSFER FILE 32-0067/0090

SUBJECT: MAP FOR TRANSFER

THE MAP ON THE ORIGINAL TRANSFER IS INCORRECT. TO FACILITATE REVIEW OF THE TRANSFER I HAVE ATTACHED A COPY OF THE TRANSFER MAP FROM MAC & BETTY WAGONER'S ADJUDICATION CLAIM'S (32-0073/0079/0078/0077/0085/0086/0087. THIS ADJUDICATION MAP MATCHES THE PLACE OF USE FROM PART 1, ITEM B.5, OF THE TRANSFER.


KEITH C. WILSON
SENIOR RESOURCE AGENT

MICROFILMED
MAY 27 1999

07 March 1991

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

RE: Birch Creek Ranches, Inc. Transfers

Dear Mr. Foster:

In the review of the Birch Creek Ranches's transfer for 17.5 cfs I found that the legal description of the proposed place of use (Part 1, Item # B.5), did not agree with the map. In fact the page for the map referred to a map filed with original application. Assuming that this is the map that accompanied the transfer for Mac or Betty Wagoner, Sec 6, T08N, R33E, does not agree with Part 1, Item # B.5. To assist you I have enclosed a copy of Part 1, Item B.5, and maps of that area of Sec 6, T08N, R33E.

In the review of the Birch Creek Ranches's transfer for 4.0 cfs I found that the legal description of the proposed place of use (Part 1, Item # B.5), did not agree with the map (Part # 3). For your convenience enclosed is a copy of the USGS map of the area as described in Part 1 B.5 (Map is from Mac Wagoner's adjudication claims). If this map is correct I already have a copy in this office just let me know, and I'll attach it to the transfer.

Please review the maps and item B.5 to determine the correct place of use.

To complete the review of the applications for transfer please submit a copy of last years's tax notice for the property to which the water right is appurtenant (Attachment No. 3 for transfer for 4.0 cfs, and Attachment No. 4 for transfer for 17.5 cfs) or other documents which show ownership.

Please respond on or before 20 March 1991. Processing of the transfer will continue upon receipt of the information.

Sincerely,

Keith C. Wilson
Senior Resource Agent

MICROFILMED
MAY 27 1999

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
MICHAEL D. CRAPO
GAYLE A. SORENSON
DONALD L. HARRIS
RANDALL B. REED
MARIE T. FEELEY
JOHN G. SIMMONS
ROBERT M. FOLLETT

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

MAR 14 1991

March 13, 1991

Keith C. Wilson, Senior Resource Agent
IDAHO DEPARTMENT OF WATER RESOURCES
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

RE: Birch Creek Ranches, Inc.
Amended Applications for Transfer

Dear Mr. Wilson:

In response to your letter of March 7th which we received on the 11th:

1. With respect to the portion of Birch Creek Ranches' Amended Application for Transfer of 17.5 cfs to D & D lands, the correct place of use is shown under Part 1, Item # B.5. The map we referred to was not the map submitted by Mac and Betty Wagoner, but rather the map filed with the original Birch Creek Ranches application in April of 1989. This water is leased to D & D Enterprises and we relied upon the legal description of 960 acres supplied by Mr. Jim DeMordaunt. We do not know for certain who prepared the map for the Wagoner application; we thought it was Ron Carlson.

2. With respect to the portion of Birch Creek Ranches' Amended Application for Transfer for 4.0 cfs to Wagoner lands, we copied Part 1, Item # B.5 and the map from the copy of Wagoners' application which was furnished to us by Mr. Breck Barton, and we assumed that the correct description was contained in Part 1, Item # B.5. We neither prepared nor reviewed the map submitted by Mr. Wagoner; again, we thought it was all prepared by Ron Carlson, but really do not know for certain.

MICROFILMED
MAY 27 1999

Keith C. Wilson, Senior Resource Agent
March 13, 1991
Page 2

As between the map and the 960 acres of D & D land described in Part 1, Item # B.5, we think the latter is correct. As between the map and the 339 acres of Wagoner land shown in Part 1, Item # B.5, we think you will need to consult with Wagoners or their attorney to determine which is correct.

We have requested copies of the tax notices for the 960 acres of Birch Creek Ranches' lands and will forward them when they arrive. Because these are amendments of the application filed in 1989, and because notice of that application was already published, we thought this item was no longer necessary.

Yours very truly,


Kent W. Foster

#6936.00/srs

cc: Breck H. Barton, Esq.

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO
P. O. BOX 50130
IDAHO FALLS, IDAHO 83405

Keith C. Wilson, Senior Resource Agent
IDAHO DEPT. OF WATER RESOURCES

HAND DELIVER

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MAY 27 1999

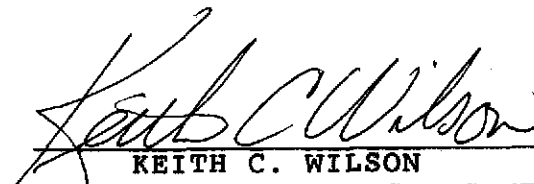
FROM: KEITH C. WILSON - EASTERN

27 MARCH 1991

TO: TRANSFER FILE 32-0067

SUBJECT: DESCRIPTION OF RIGHT AS RECORDED PART 2, ITEM A.5,
PURPOSE OF USE

THE DECREE RENO VS. RICHARDS AND TRANSFER 2165 DO NOT LIST STOCKWATER AS A USE FOR THIS WATER RIGHT (32-0067). THE APPLICANTS HAVE INCLUDED STOCKWATER AS A USE IN PART 1, ITEM B.1, AND IN PART 2, ITEM A.5 (DESCRIPTION OF RIGHT AS RECORDED).



KEITH C. WILSON
SENIOR RESOURCE AGENT

MICROFILMED

MAY 27 1999

FROM: KEITH C. WILSON

25 MARCH 1991

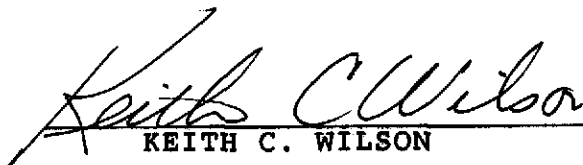
TO: FILE BIRCH CK TRANSFER FOR 4.0 CFS

SUBJECT: EXPANSIONS

TRANSFER 2165 MADE WATER RIGHT 32-0090 APPURTENANT TO 960 ACRES. THE APPLICATION FOR TRANSFER FOR 17.5 CFS PROPOSES TO SPLIT THIS RIGHT IN HALF KEEPING 0.80 CFS APPURTENANT TO 960 ACRES, BIRCH CREEK RANCHES LAND. THE APPLICATION FOR TRANSFER FOR 4.0 CFS TRANSFERS THE REMAINING 0.80 CFS TO 339 ACRES, MAC WAGONER'S LAND, THUS REDUCING THE ACREAGE OF THIS PORTION OF THE RIGHT FROM 480 ACRES TO 339 ACRES. WHEN VIEWED TOGETHER THESE TWO APPLICATIONS FOR TRANSFER WOULD BE AN EXPANSION FROM 960 ACRES TO 1299 ACRES.

32-00090 / T2165	----->	0.80 CFS FOR 339 ACRES
(1.6 CFS) \		
(960 AC) \	----->	0.80 CFS FOR 960 ACRES

1299 ACRES


KEITH C. WILSON

MICROFILMED

MAY 27 1999



State of Idaho
DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

03 April 1991

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

RE: Birch Creek Ranches, Inc. Transfers - Proof of Ownership -
Tax Notices

Dear Mr. Foster:

The tax notices that were received by this office did not
include the following place of use:

Tax 1, Sec 19, T10N, R30E: SE $\frac{1}{4}$ SW $\frac{1}{4}$ lying east of Highway 28
right-of-way; Lot 4 lying east of Highway 28 right-of-way;
and that part of Lot 3 lying east of Highway 28
right-of-way and south of a line running east from the
intersection of the highway right-of-way and existing fence
line (known as the Dance Hall field fence).

Tax 2, Sec 30, T10N, R30E: The north half of Section 30
lying east of the Highway 28 right-of-way.

Both of these legal descriptions are found in attachment # 3 and
4 which describe the original place of use.

Please respond with the proof of ownership on or before 30 April
1991. Your prompt attention to this would be appreciated.

Sincerely,

Keith C. Wilson
Senior Resource Agent

MICROFILMED
MAY 27 1999

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J. HAHN
KENT W. FOSTER
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RANDALL B. REED
MARIE T. FEELEY
JOHN G. SIMMONS
ROBERT M. FOLLETT

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

RECEIVED

MAR 19 1991

Department of Water Resources
Eastern District Office

March 19, 1991

Keith C. Wilson, Senior Resource Agent
IDAHO DEPARTMENT OF WATER RESOURCES
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

RE: Birch Creek Ranches, Inc.
Amended Applications for Transfer

Dear Mr. Wilson:

We have just received and are enclosing copies of the relevant tax notices in the above referenced matter.

If you have additional questions or comments, please contact me.

Yours very truly,

John G. Simmons for
Kent W. Foster

#6936.00/srs

Enclosure

MICROFILMED

MAY 27 1999

BETTY KIRKPATRICK
CLARK COUNTY ASSESSOR
BOX 7
DUBOIS, ID 83423

THIS IS NOT A BILL

CORRECTED NOTICE

PARCEL NO. RP 10N30E193612 A

TAX CODE

LOTS / ACRES

MARKET VALUE

CATEGORY DESCRIPTION
1 IRRGTD AG
5 DRY GRAZING

53.000 AC
70.500 AC

11,130
1,974

1990

TAXPAYERS

VALUATION

123.500

13,104*

ASSESSMENT NOTICE

Taxes are based on the valuation
listed on this statement

IF THERE ARE ANY QUESTIONS
REGARDING THIS STATEMENT
NOTIFY THE ASSESSOR'S OFFICE BEFORE

JUNE 22, 1990

See the reverse side for further references
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS

PREVIOUS NUMBER

RP10N30E193610A Mail To:

SEC 19 TWP 10 RGE 30

LOT 2, TAX 2 LESS 7 AC FOR RD

SIMMONS, WILLIAM T & THEOLA
% BIRCH CREEK RANCHES, INC.
2988 TIPPERARY LANE
IDAHO FALLS, ID 83404

Lot 2 - SW NW

Tax 2 -

BETTY KIRKPATRICK
CLARK COUNTY ASSESSOR
BOX 7
DUBOIS, ID 83423

THIS IS NOT A BILL

CORRECTED NOTICE

PARCEL NO. RP 10N30E320610 A

TAX CODE

LOTS / ACRES

MARKET VALUE

CATEGORY DESCRIPTION
1 IRRGTD AG
5 DRY GRAZING
19 WASTE

144.800 AC
296.270 AC
12.000 AC

27,367
8,162

1990

TAXPAYERS

VALUATION

453.070

35,529*

ASSESSMENT NOTICE

Taxes are based on the valuation
listed on this statement

IF THERE ARE ANY QUESTIONS
REGARDING THIS STATEMENT
NOTIFY THE ASSESSOR'S OFFICE BEFORE

JUNE 22, 1990

See the reverse side for further references
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS

PREVIOUS NUMBER

Mail To:

SEC 32 TWP 10 RGE 30

W2E2, SESE, NENW, TAX 1,3,4

S2NW, N2SW, SESW LESS 12.3 AC.
RD

SIMMONS, WILLIAM T & THEOLA
% BIRCH CREEK RANCHES, INC.
2988 TIPPERARY LANE
IDAHO FALLS, ID 83404

Tax 1 -

3 -

4 -

MICROFILMED

MAY 27 1993

BETTY KIRKPATRICK
CLARK COUNTY ASSESSOR
BOX 7
DUBOIS, ID 83423

THIS IS NOT A BILL

PARCEL NO. RP 10N29E113010 A

TAX CODE

3-00

CATEGORY DESCRIPTION

LOTS / ACRES

MARKET VALUE

1 IRRGTD AG
5 DRY GRAZING
19 WASTE

144.600 AC 41,934
119.400 AC 3,343
16.000 AC

1990

TAXPAYERS

VALUATION

280.000

45,277*ASSESSMENT NOTICE

Taxes are based on the valuation
listed on this statement

IF THERE ARE ANY QUESTIONS
REGARDING THIS STATEMENT
NOTIFY THE ASSESSOR'S OFFICE BEFORE

JUNE 15, 1990

See the reverse side for further references
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS

PREVIOUS NUMBER

SEC 11 TWP 10 RGE 29
SENE, W2NW, NESW, W2SE, SESE

Mail To:

SIMMONS, WILLIAM T & THEOLA
X BIRCH CREEK RANCHES, INC.
2988 TIPPERARY LANE
IDAHO FALLS, ID 83404

BETTY KIRKPATRICK
CLARK COUNTY ASSESSOR
BOX 7
DUBOIS, ID 83423

THIS IS NOT A BILL

PARCEL NO. RP 10N29E126010 A

TAX CODE

3-00

CATEGORY DESCRIPTION

LOTS / ACRES

MARKET VALUE

1 IRRGTD AG
5 DRY GRAZING

34.200 AC 7,934
5.800 AC 99

1990

TAXPAYERS

VALUATION

40.000

8,033*

ASSESSMENT NOTICE

Taxes are based on the valuation
listed on this statement

IF THERE ARE ANY QUESTIONS
REGARDING THIS STATEMENT
NOTIFY THE ASSESSOR'S OFFICE BEFORE

JUNE 15, 1990

See the reverse side for further references
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS

PREVIOUS NUMBER

SEC 12 TWP 10 RGE 29
SWSW

Mail To:

SIMMONS, WILLIAM T & THEOLA
X BIRCH CREEK RANCHES, INC.
2988 TIPPERARY LANE
IDAHO FALLS, ID 83404

MICROFILMED

MAY 27 1999

BETTY KIRKPATRICK
CLARK COUNTY ASSESSOR
BOX 7
DUBOIS, ID 83423

THIS IS NOT A BILL

PARCEL NO. RP 10N29E133010 A

CATEGORY DESCRIPTION	
1	IRRGTD AC
5	DRY GRAZING
19	WASTE

TAX CODE	
3-00	
LOTS / ACRES	MARKET VALUE
75.200 AC	17,446
185.700 AC	2,628
19.100 AC	

1990
TAXPAYERS
VALUATION

280.000

20,074

ASSESSMENT NOTICE
Taxes are based on the valuation
listed on this statement

IF THERE ARE ANY QUESTIONS
REGARDING THIS STATEMENT
NOTIFY THE ASSESSOR'S OFFICE BEFORE
JUNE 15, 1990

See the reverse side for further reference
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS

PREVIOUS NUMBER
SEC 13 TWP 10 RGE 29
W2NW, N2SW, S2SW, S2SE

Mail To:
SIMMONS, WILLIAM T & THEOLA
X BIRCH CREEK RANCHES, INC.
2988 TIPPERARY LANE
IDAHO FALLS, ID 83404

BETTY KIRKPATRICK
CLARK COUNTY ASSESSOR
BOX 7
DUBOIS, ID 83423

THIS IS NOT A BILL

PARCEL NO. RP 10N29E140010 A

CATEGORY DESCRIPTION	
1	IRRGTD AC
5	DRY GRAZING
19	WASTE

TAX CODE	
3-00	
LOTS / ACRES	MARKET VALUE
58.100 AC	13,479
99.500 AC	932
2.400 AC	

1990
TAXPAYERS
VALUATION

160.000

14,411

ASSESSMENT NOTICE
Taxes are based on the valuation
listed on this statement

IF THERE ARE ANY QUESTIONS
REGARDING THIS STATEMENT
NOTIFY THE ASSESSOR'S OFFICE BEFORE
JUNE 15, 1990

See the reverse side for further reference
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS

PREVIOUS NUMBER
SEC 14 TWP 10 RGE 29
N2NE, SENE, NESE

Mail To:
SIMMONS, WILLIAM T & THEOLA
X BIRCH CREEK RANCHES, INC.
2988 TIPPERARY LANE
IDAHO FALLS, ID 83404

MICROFILMED

MAY 27 1999

BETTY KIRKPATRICK
CLARK COUNTY ASSESSOR
BOX 7
DUBOIS, ID 83423

THIS IS NOT A BILL

PARCEL NO. RP 10N29E240010 A

CATEGORY DESCRIPTION	TAX CODE	3-00	MARKET VALUE	1990
	LOTS / ACRES			
1 IRRGTD AG	23.500 AC		6,815	
5 DRY GRAZING	140.200 AC		1,582	
19 WASTE	11.400 AC			
	195.100		8,397*	

TAXPAYERS
VALUATION

ASSESSMENT NOTICE
Taxes are based on the valuation
listed on this statement

IF THERE ARE ANY QUESTIONS
REGARDING THIS STATEMENT
NOTIFY THE ASSESSOR'S OFFICE BEFORE

JUNE 15, 1990

See the reverse side for further references
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS
PREVIOUS NUMBER

SEC 24 TWP 10 RGE 29
E2NE, LESS TAX 1, 2, 3 & PARCEL
1830 KNOWN AS TAX 1A N2SE,
SESE

Mail To:

SIMMONS, WILLIAM T & THEOLA
X BIRCH CREEK RANCHES, INC.
2988 TIPPERARY LANE
IDAHO FALLS, ID 83404

BETTY KIRKPATRICK
CLARK COUNTY ASSESSOR
BOX 7
DUBOIS, ID 83423

THIS IS NOT A BILL

PARCEL NO. RP 10N29E250010 A

CATEGORY DESCRIPTION	TAX CODE	3-00	MARKET VALUE	1990
	LOTS / ACRES			
1 IRRGTD AG	8.000 AC		2,320	
5 DRY GRAZING	32.000 AC		256	
	40.000		2,576*	

TAXPAYERS
VALUATION

ASSESSMENT NOTICE
Taxes are based on the valuation
listed on this statement

IF THERE ARE ANY QUESTIONS
REGARDING THIS STATEMENT
NOTIFY THE ASSESSOR'S OFFICE BEFORE

JUNE 15, 1990

See the reverse side for further references
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS
PREVIOUS NUMBER

SEC 25 TWP 10 RGE 29
NENE

Mail To:

SIMMONS, WILLIAM T & THEOLA
X BIRCH CREEK RANCHES, INC.
2988 TIPPERARY LANE
IDAHO FALLS, ID 83404

MICROFILMED

MAY 27 1993

BETTY KIRKPATRICK
CLARK COUNTY ASSESSOR
BOX 7
DUBOIS, ID 83423

THIS IS NOT A BILL

PARCEL NO. RP 10N30E295410 A

TAX CODE 3-00
LOTS / ACRES MARKET VALUE

CATEGORY DESCRIPTION	LOTS / ACRES	MARKET VALUE	1990
1 IRRGTD AG	12.600 AC	2,381	
5 DRY GRAZING	71.200 AC	570	
10 RURAL HOMESITE	1.000 AC	2,500	TAXPAYERS
31 RURAL RES BLDG		19,368	VALUATION
32 RURAL IMP ON AG		24,651	ASSESSMENT NOTICE
	84.800	49,470*	

Taxes are based on the valuation listed on this statement

IF THERE ARE ANY QUESTIONS REGARDING THIS STATEMENT NOTIFY THE ASSESSOR'S OFFICE BEFORE

JUNE 15, 1990

See the reverse side for further references
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS
PREVIOUS NUMBER

SEC 29 TWP 10 RGE 30
TAX 1, SESW

Mail To:

SIMMONS, WILLIAM T & THEOLA
X BIRCH CREEK RANCHES, INC.
2988 TIPPERARY LANE
IDAHO FALLS, ID 83404

Tax 1 - NW 1/4 Sec 29
plus NWNW Sec 32
10N 30E

BETTY KIRKPATRICK
CLARK COUNTY ASSESSOR
BOX 7
DUBOIS, ID 83423

THIS IS NOT A BILL

PARCEL NO. RP 10N30E303010 A

TAX CODE 3-00
LOTS / ACRES MARKET VALUE

CATEGORY DESCRIPTION	LOTS / ACRES	MARKET VALUE	1990
1 IRRGTD AG	49.500 AC	10,395	
5 DRY GRAZING	52.880 AC	1,481	TAXPAYERS
19 WASTE	3.600 AC		VALUATION
	105.980	11,876*	ASSESSMENT NOTICE

Taxes are based on the valuation listed on this statement

IF THERE ARE ANY QUESTIONS REGARDING THIS STATEMENT NOTIFY THE ASSESSOR'S OFFICE BEFORE

JUNE 15, 1990

See the reverse side for further references
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS
PREVIOUS NUMBER

RP 10N30E300010A
SEC 30 TWP 10 RGE 30
LOT 1, TAX 3 & HWY

Mail To:

SIMMONS, WILLIAM T & THEOLA
X BIRCH CREEK RANCHES, INC.
2988 TIPPERARY LANE
IDAHO FALLS, ID 83404

Lot 1 - NWNW

Tax 3 - E 1/2 NW 1/4 lying West of Hwy 28
MICROFILMED

MAY 27 1990

FROM: KEITH C. WILSON

4 APRIL 1991

TO: TRANSFER FILE 17.5 CFS ATTACHMENT 4
TRANSFER FILE 4.0 CFS ATTACHMENT 3

SUBJECT: PROOF OF OWNERSHIP

FROM BONNIE BURNS, TREASURER FOR CLARK COUNTY, THE OWNERSHIP OF PARCELS IDENTIFIED ONLY BY TAX NUMBERS IS AS FOLLOWS:

SEC 19, T10N, R30E
TAX 1 - WILLIAM SIMMONS
TAX 2 - BIRCH CREEK RANCHES INC.

SEC 30, T10N, R30E
TAX 2 - WILLIAM SIMMONS
TAX 3 - BIRCH CREEK RANCHES INC.

TAX NOTICES ADDRESSED AS SIMMONS, WILLIAM T. & THEOLA C/O BIRCH CREEK RANCHES INC. INDICATES THAT MR. SIMMONS STILL OWNS THE PLACE OF USE AND BIRCH CREEK RANCHES IS PURCHASING THE PROPERTY ON CONTRACT.

THE LEGAL DESCRIPTIONS IDENTIFIED AS TAX 1 SECTION 19, AND TAX 2 SECTION 30, T10N, R30E, NEED TO BE INCLUDED TO COMPLETE PROOF OF OWNERSHIP OF THE LAND LIST IDENTIFIED IN ATTACHMENT # 3 AND 4. OWNERSHIP OF TAX 1 SECTION 19, AND TAX 2 SECTION 30, T10N, R30E, IS STILL IN MR. SIMMONS NAME; THEREFORE, IT WOULD APPEAR THAT MR. SIMMONS SHOULD HAVE SOME SAY INTO WHAT IS HAPPENING TO THESE WATER RIGHTS.


KEITH C. WILSON
SENIOR RESOURCE AGENT

MICROFILMED

MAY 27 1999

ASSESSOR'S LIST OF TAX NUMBERS

FREMONT COUNTY, IDAHO

Tax # 1
29-10-30
10030 229540 H
Sec 29-32

Description of Each Tract of Land Designated by Tax Number

Sec 32
Base

Beginning at the Northeast corner of the Northwest quarter of the Southwest quarter Section Twenty-nine in Tsp. Ten North Range Thirty East Boise Meridian thence West ^{792'} Twelve Chains; Thence, South ^{1188'} Eighteen chains; Thence East ^{132'} two chains; Thence South ^{188'} eighteen chains; Thence west ^{198'} Three chains; thence South ^{924'} Fourteen chains; Thence west ^{462'} seven chains; thence South ^{660'} ten chains to the Southwest corner of the Northwest quarter of the Northwest quarter Section thirty two; thence East ^{1320'} ^{3960'} 20 chains; thence North Sixty chains to place of beginning.

Am. T. Simmons

29 Tax 1
32 Tax 1, 3, 4

MICROFILMED
MAY 27 1999

RECEIVED
MAR
FEB 28 1991

T10N R30E Section 19

Department of Water Resources
Eastern District Office

* Tax 1...owner.... Simmons

The SE4SW4 lying east of Highway 28 right-of-way; Lot 4 lying east of Highway 28 right-of-way; and that part of Lot 3 lying east of Highway 28 right-of-way and south of a line running east from the intersection of the highway right-of-way and the existing fence line (known as the Dance Hall field fence). #42322

** Tax 2...owner.... Birch Creek Ranches

The SE4SW4 lying west of Highway 28 right-of-way; Lot 4 lying west of Highway 28 right-of-way; that part of Lot 3 lying west of Highway 28 right-of-way and north of a line running east from the intersection of the highway right-of-way and the existing fence line (known as the Dance Hall field fence). Compiled by Sheldon Bluestein 4/89.

T10N R30E Section 30

* Tax 2...owner.... Simmons

The north half of Section 30 lying east of the Highway 28 right-of-way. #42322

** Tax 3...owner.... Birch Creek Ranches

The east half of the NW4 lying west of the Highway 28 right-of-way. Compiled by Sheldon Bluestein 4/89.

Simmons TO Ted Sorensen

4-1-1991

* Ownership: Simmons, William T & Theola

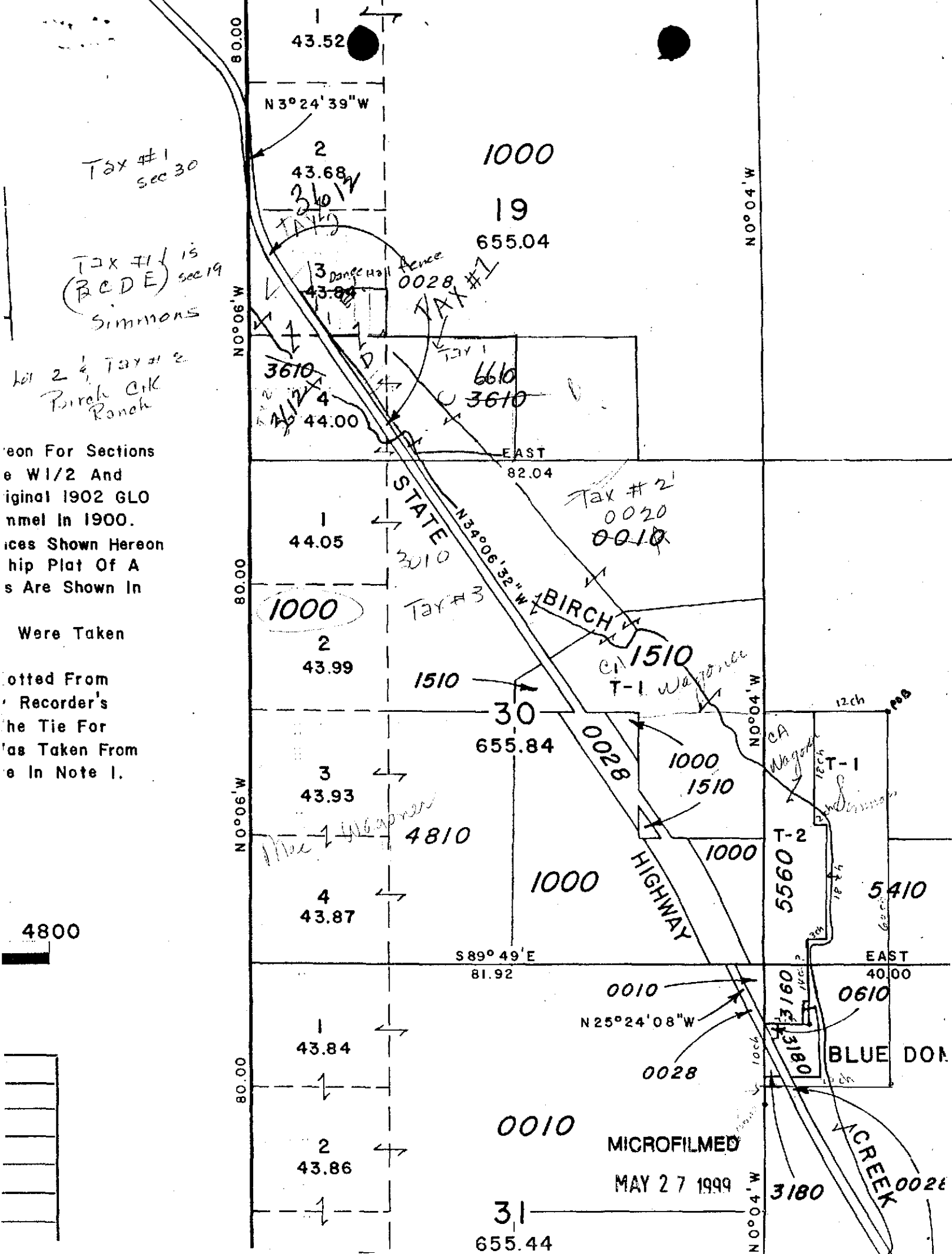
** Ownership: Birch Creek Ranches, Inc.

Confirmed by tele con w/Clark Co. Treasurer
Bonnie Burns.

Keith C. Wilson

MICROFILMED

MAY 27 1999



Tax #1
sec 30

Tax #1 is
(BCDE) sec 19
Simmons

lot 2 1/2 Tax #2
Birch Creek
Ranch

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4800



MICROFILMED
MAY 27 1999

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

Post office address Terreton, Idaho 83450

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.

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)

8. Sec. 29, NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 32, T. 10N, R. 30E(not given in decree but have historically
Lands irrigated or place of use: been at the above locations.)

[illegible]

Total number of acres to be irrigated

MICROFILMED

LAND LIST ATTACHMENT

Description and location of place of use:

[illegible]

MICROFILMED

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 _____ $\frac{1}{4}$ _____ $\frac{1}{4}$, Section _____ Township _____
Range _____, B.M., _____ County
- Additional points _____

3. Place of use:

[illegible]

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 $\frac{1}{4}$ NE $\frac{1}{4}$, Section 14 Township 10N
Range 29E, B.M., Clark County
Additional points NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 11, NW $\frac{1}{4}$ NE $\frac{1}{4}$, 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, 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, $\frac{1}{2}$ 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.

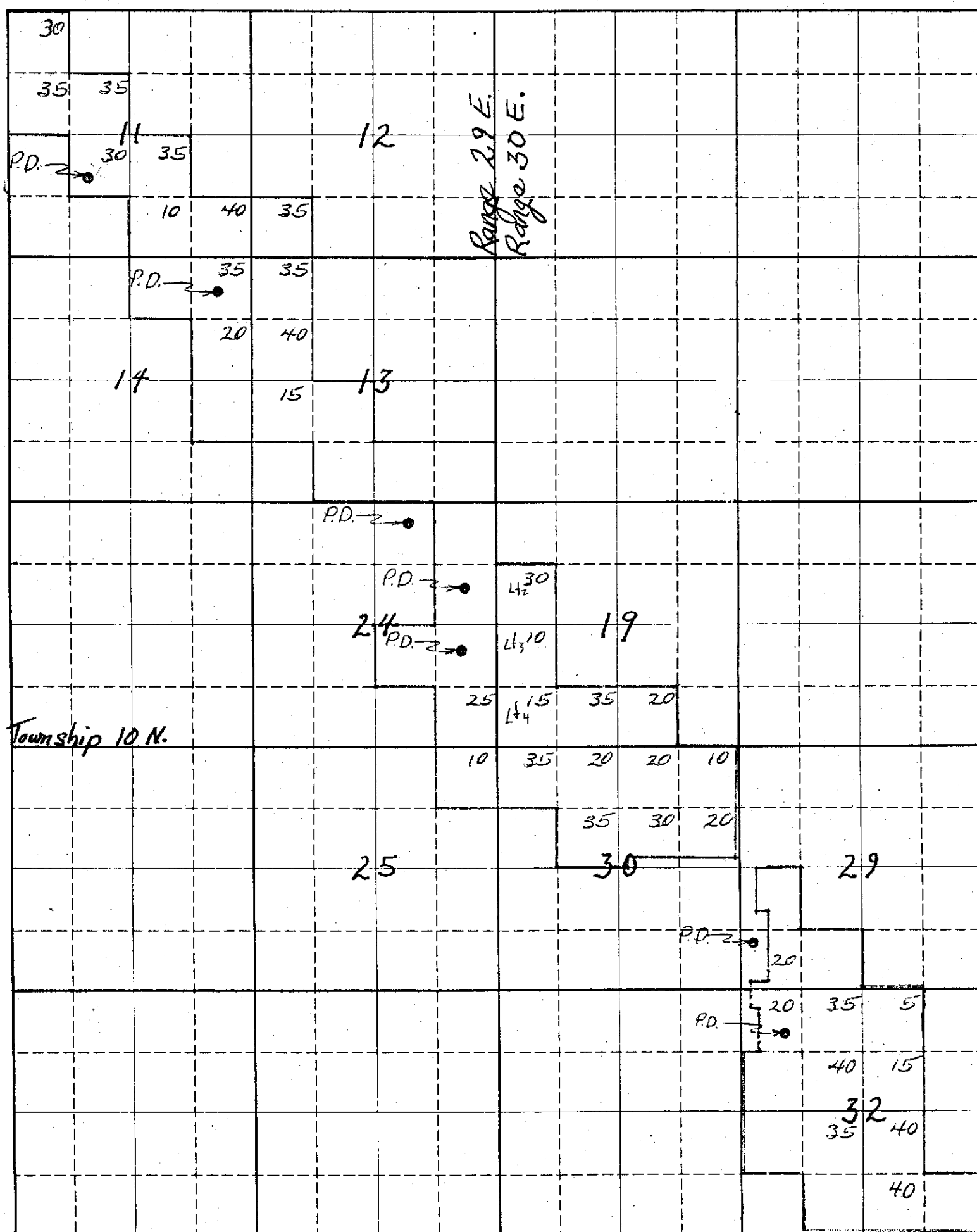
2. Change in place of use

- 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	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

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

- 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.

WATER

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.

1. 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

RECEIVED

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 Cal
Hearing held by _____ Date _____
Recommended for approval denial
by Eric Jim Orr

Birch Creek

32-0

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

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
J. R. Richards, X
Plaintiff, X
vs X
Frank Reno, S. Kuharski, William X
Goddard, W. A. Tyler, Samuel Goddard, X
M. Kaufman, W. A. Scott, W. W. Johnson, X
Thomas Miller, David Miller, Edward X
Kaufman, and Henry Kaufman, X
Defendants, X
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

MICROFILMED

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. Rogers 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. Harner 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

10677 That the said Wood Live Stock Company, a corporation, aforesaid, as successor in interest of Thomas and David Miller, have at all times the use of three and two-tenths (3.2) cubic feet per second of time (one hundred and sixty miners' inches) of the waters of the said Birch Creek, its right to the use of the same to date from the 10th day of September, 1882, to be used upon and become appurtenant to the following described lands:

Lots Two (2), Three (3), and Four (4), and the South-East Quarter of the South-west Quarter of Section Nineteen (19), in Township Ten (10) North of Range Thirty (30) East of the Boise Meridian.

32 0068 That the said Wood Live Stock Company, as the successor in interest of Thomas and David Miller, have at all times the use of three and two-tenths (3.2) cubic feet per second of time (one hundred and sixty miners' inches) of the waters of the said Birch Creek, and also all of the waters of that certain spring, known as Miller's Spring, a tributary of the said Birch Creek; its right to the use of the same to date from the 10th day of May, 1887, to be used upon and become appurtenant to the following described lands:

The North-east Quarter of the North-west Quarter, and the North Half of the North-east Quarter, of Section Thirty (30), and the South-west Quarter of the South-east Quarter of Section Nineteen (19), Township Ten (10) North of Range Thirty (30) East of the Boise Meridian, containing one hundred and sixty acres, in Clark County, State of Idaho.

32 0069 That the said Wood Live Stock Company, a corporation, as the successor in interest of William Goddard, also have, at all times, the use of three and two-tenths (3.2) cubic feet per second of time (one hundred and sixty miners' inches) of the waters of said Birch Creek, its right to the use of the same to date from the 10th day of May, 1888, to be used upon and become appurtenant to the following described lands:

The South-east Quarter of the North-east Quarter, and the North Half of the South-east Quarter, and the South-east Quarter of the Southeast Quarter of Section Twenty-four (24), in Township Ten (10) North of Range Twenty-nine (29) East of the Boise Meridian, containing one hundred and sixty acres, in Clark County, State of Idaho.

32 0070 That Clara Granger and F.E. Granger, as the successors in interest of S. Kiharski, have at all times the use of three and two-tenths (3.2) cubic feet per

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Trans #

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



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.

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MAY 27 1999

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.

iii : 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.

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MAY 27 1999

Mr. Kent Foster
Page 3
May 7, 1997

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

Sincerely,



NORMAN C. YOUNG
Administrator
Water Management Division

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

MAY 27 1999

BIRCH CREEK Ranches, INC.

5-2-97

PJZ

3-24-97 - PRELIMINARY ORDER ISSUED

4-7-97 - Letter from Foster [MAY be treated
as timely petition for reconsideration.
(14 days after order)]

4-14-97 - DATE PRELIMINARY ORDER BECAME
FINAL IF FOSTER LETTER NOT
TREATED AS A PETITION FOR RECONSIDERATION
(21 days after order).

4-28-97 - DATE PETITION FOR RECONSIDERATION DENIED
IF NOT ACTED ON BY HEARING OFFICER
(21 days after petition filed)

5-19-97 - DATE PRELIMINARY ORDER BECOMES
FINAL IF FOSTER LETTER TREATED AS
A PETITION FOR RECONSIDERATION AND
DENIED BY INACTION FOR 21 DAYS.

5-12-97 - LAST DAY TO FILE PETITION FOR JUDICIAL
REVIEW FROM ORDER FINAL ON 4-14-97

6-16-97 - LAST DAY TO FILE PETITION FOR JUDICIAL
REVIEW FROM ORDER FINAL ON 5-19-97.

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MAY 27 1999

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(1907-1988)

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APR 07 1997

Department of Water Resources

April 4, 1997

Mr. Norman C. Young, Administrator
IDAHO DEPARTMENT OF
WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

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

Dear Mr. Young:

We have had an opportunity to review the preliminary order issued in the above matter. Birch Creek Ranches is offended and astonished by the determination to ignore the prior decision not to bifurcate the processing of this application from the processing of the applications with which it was filed, and the determination to make a decision over the objection of the applicant itself. However, Birch Creek Ranches has questions regarding the "conditions of approval and remarks" which, depending upon the answers, may help to moderate some concerns.

The first condition listed on the second page of the transfer document is that use of water under the transferred rights is to be regulated by the district watermaster. The question Birch Creek Ranches has is the practical issue of enforcement. For example, you make it clear that the irrigation season is to begin April 15 and end October 15. In the experience of Birch Creek Ranches, Wagoners ignore these dates, and divert when, and in such amounts as they please. This year, 1997, they again began diverting in excess of 4.0cfs about April 1. And yet in the past, when Birch Creek Ranches has complained to IDWR and the watermaster, Birch Creek Ranches has been informed that the watermaster has no responsibility for preseason diversions. Do you envision that there is any enforcement mechanism available, and if so, what is it?

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MAY 27 1999

Mr. Norman C. Young, Administrator
April 4, 1997
Page 2

Very much related to the first question, is the issue of nonirrigation season diversions by Wagoners for stock water purposes. Wagoners often ignore their agreement not to divert more than .8cfs for stock water during the nonirrigation season. Last year when Ted Sorenson spoke with you about the problem and you refused to ask the watermaster to regulate the stock water diversion, he understood you to promise that you would take care of the stock water issue as part of the transfer. We see no reference to the problem in this decision. Beyond the contractual agreement with Ted Sorenson, what nonirrigation stock water right does Wagoner have, and how can another water user enforce its regulation?

Under condition No. 8, you have provided an annual volume limitation of 1,186.5 acre feet. If we understand it correctly, this figure was derived from multiplying the number of irrigated acres (339) by the 3.5afa figure in condition No. 3. What is the 1,186.5 acre feet a limitation of, and how can it be enforced? If the irrigation season is from April 15 to October 15, that appears to be 184 days. If Wagoners divert the full 4.0cfs for 184 days, the total volume diverted would appear to be more like 1,459.9 acre feet. How does that figure relate to the 1,186.5 acre foot limitation.

Condition No. 10 seems to say that a delivery loss will be assessed only at any time there would not have been water available under the former right. We don't understand the reasoning, but that sounds like a very unlikely event. What is the reasoning, and will the same logic be applied to the proposed transfer of the rest of the Simmons ranch rights further downstream? Or is this just a decision not to assess the proportionate share of any transmission loss against rights Nos. 32-00067 and 32-00090B?

You can, we suppose, treat this letter as a petition for reconsideration, or as exceptions to the preliminary order. But it is not our intention to delay the entry of a final order in this matter. We will very much appreciate receiving your response.

Very truly yours,



Kent W. Foster

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MAY 27 1999

pc. Breck Barton
Ted Sorenson



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

March 24, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the Matter of use of Application for Transfer No. 3827 in
the name of Birch Creek Ranches, Inc.

Dear Interested Party:

The accompanying order is a "preliminary order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The

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MAY 27 1999

Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one(21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,



L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

C: IDWR - Region

February 13, 1997

Mr. Kent Foster
HOLDEN, KIDWELL, HAHN & CRAPO
U.S. Bank of Idaho Building
330 Shoup Ave., Third Floor
P.O. Box 50130
Idaho Falls, ID. 83405

RE: Birch Creek Ranches Application for Permit

Dear Kent:

We are in receipt of the letter and application for permit you submitted on behalf of Birch Creek Ranches. While I am sure you have considered the matter fully before submitting this application, I wanted to write to confirm your understanding of the following: (1) that this application, after being receipted, may not even be advertized and could end up residing in our hold file for an extended period of time, (2) it is not a given that there is "saved water" available for appropriation, and initially it appears that the application violates the understanding the Birch Creek water users had with Ted Sorensen which ultimately allowed his application for a hydro-power right on Birch Creek to be approved, (3) the moratoriums are specifically established to prevent new land from being irrigated. Even though the land identified in this application has been irrigated in the past, the transfer of the water rights by Blaine Larsen has, for moratorium purposes made it new ground. The mitigation proposal, if it has any merit, would be limited to use on other irrigated ground.

We will hold the check and application until February 19 in case you chose to reconsider proceeding with this application. Since the application appears to be generally in form to be receipted it will commence its official residency on that date.

Very truly yours,


Ronald D. Carlson
Manager, Eastern Region

Post-It™ brand fax transmittal memo 7671		# of pages > 1
To	Glen Saxon	
Co.	IDWR	
Dept.	Bast	
Fax #		
From	H. W. JONES	
Co.	IDWR	
Phone #	525-7161	
Fax #		

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MAY 27 1999

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FEB 18 1997

February 14, 1997

Department of Water Resources

Mr. Carl J. Dreher, Director
IDAHO DEPARTMENT OF
WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Re: Birch Creek Ranches, Inc.

Dear Director Dreher:

We are writing directly to you because of apparent actions of employees of the Department which are surprising to us and of significant concern to our client.

On February 11, 1997, we sent an Application for Permit to the Eastern Region Office here in Idaho Falls for filing and processing. A copy of our transmittal letter summarizing the application is enclosed for your reference.

On Thursday, February 13, 1997, I received a telephone call from Mr. Harold W. Jones of the Idaho Falls office who advised me, as best I could understand, that the application had been received, but that Ron Carlson, after consultation with Norm Young, had instructed Mr. Jones to advise us the application would not be accepted for filing and would not be processed. When I inquired why, Mr. Jones indicated a decision had been made that there is no saved or salvaged water to appropriate. I stated to be my understanding it that such a determination was to be made after hearing evidence, and in the context of proper processing of the application. Mr. Jones then informed me he was just the messenger. I requested that the rejection of the application and the reasons therefore be put in writing and furnished to us. I did not receive either an affirmative or a negative response to this request.

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MAY 27 1999

SAXTON —
my recollection of
this matter was
relative to whether a
new consumptive permit
could be issued given the
present moratorium. We,
of course, always accept
applications & give due
process. *any*

Mr. Carl J. Dreher, Director
February 14, 1997
Page 2

We would appreciate anything you can do to assure and expedite a written explanation of this prejudgment of our client's application. Since timing is important to our client, we would request this within 10 days. Thank you very much for your kind consideration of this matter.

Very truly yours,



Kent W. Foster

Enclosure

pc. Ted Sorenson

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MAY 27 1999

Law Offices
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William S. Holden
(1907-1988)

February 11, 1997

COPY

IDAHO DEPARTMENT
OF WATER RESOURCES
900 N. Skyline
Idaho Falls, Idaho 83402-1718

Gentlemen:

We are enclosing an Application for Permit for filing, together with a check for the filing fee in the amount of \$420.

This is an application for permit to appropriate the water saved or salvaged because of the construction by Mr. Ted Sorenson of a power plant using water from Birch Creek in Clark County, Idaho. The construction of the new diversion, lined pond and power channel, and pipeline to the power plant eliminated former transmission losses which occurred in about 3,000 feet of the Birch Creek channel and approximately 8-10 miles of the old Reno Ditch. The elimination of such losses has resulted in the presence, in Reno Ditch where discharges from the power plant are reintroduced, of significantly larger amounts of water than were ever historically present at that location.

The old case of *Reno v. Richards*, and it's progeny, holds that saved or salvaged water belongs to the one who makes the investment of time, resources and effort which results in the savings. The mandatory permit statutes have come into being since the old supreme court decisions and applicant has elected to proceed as provided in the current statutory framework.

We are, of course, very much aware of the existence of the moratorium imposed by the director in May of 1992 and amended in April of 1993, as well as the provisions of Idaho Code §42-1806. This proposed application is sought under the provisions of paragraph 9(b) of the April, 1993 Amended Moratorium Order because of mitigation which the applicant proposes to provide.

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MAY 27 1999

IDAHO DEPARTMENT OF
WATER RESOURCES

February 11, 1997

Page 2

Specifically, the application seeks to appropriate 34% of the flow of Birch Creek at the new Reno diversion, which would be as much as 17cfs when the total flow at the Reno diversion is 50cfs. Up to 16.9cfs is proposed to be used for irrigation of up to 1,264 acres of land through a gravity flow sprinkler system. If the water were not used for irrigation, we assume it would both evaporate and percolate. The percolation would ultimately be to the regional aquifer system. With the proposed farming development, some portion would presumably be consumed by the crops irrigated, and only the balance would ultimately percolate. Potential evaporation will be significantly reduced because of the closed system of gravity flow sprinkler lines.

Applicant has acquired, through long term lease agreement or through purchase, four groundwater rights under which water has been diverted from the Snake Plain Regional Aquifer down gradient from the area of former recharge from losses through the lower end of Birch Creek and the Reno Ditch, as well as from the land proposed to be irrigated under this permit. The four groundwater rights, evidenced by licenses nos. 35-07334, 35-07511, 33-02106 and 33-02141, have a total diversion rate of 16.34cfs, and are presently appurtenant to 1,232 acres for the irrigation thereof. Applicant offers to forego pumping of some or all of the groundwater under these rights as mitigation for any amounts of the saved or salvaged water which will be consumed through irrigation and not returned to the regional aquifer as recharge.

Applicant is most interested in moving this application forward as soon as possible, and therefore will appreciate all that can be done to expedite the publication of notice and processing.

Thank you for your assistance.

Very truly yours,



Kent W. Foster

Enclosure

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FEB 21 1997

Law Offices
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FEB 24 1997

Department of Water Resources

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(1939-1982)
William S. Holden
(1907-1988)

February 21, 1997

COPY

Mr. Ron Carlson
IDAHO DEPARTMENT
OF WATER RESOURCES
900 N. Skyline
Idaho Falls, Idaho 83402-1718

Re: Birch Creek Ranches Application for Permit

Dear Mr. Carlson:

We received your letter of February 13, 1997, on February 19, 1997. Your letter and the enclosures were postmarked February 18, 1997. You indicate you will hold the check and the application until February 19, pending our further response, but the check and the application were enclosed with your letter. Mr. Harold Jones had left a message on our voice mail on February 18, that the check and application had apparently been enclosed with your letter by mistake. We are returning the check and the application with this letter.

We have reviewed the three statements contained in your letter concerning which you seek to confirm our understanding. Perhaps you are referring to rules or statutes or applicable law of which we are unaware, because we do not share the referenced understanding. We must therefore request additional enlightenment.

First, you say that if the application is receipted, it cannot be advertised, but must reside in your hold file. We have searched the amended moratorium order and statutes for such a requirement, but have been unsuccessful in finding it. Paragraph 9.b) of the order appears to say that the moratorium does not prevent the director from reviewing for approval an application for permit if it can be shown that development and use of the water pursuant to the application will have no effect on prior surface and groundwater rights because of mitigation provided by the applicant to off set injury to other rights. Since neither the

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MAY 27 1999

Mr. Ron Carlson
February 21, 1997
Page 2

amended moratorium order itself, nor the legislative approval of it (Idaho Code §42-1806) appears to change other existing statutes, we presume any review of an application meeting the provisions of paragraph 9.b) would of necessity be done pursuant to the provisions of Idaho Code §42-203A. The provisions of Idaho Code §42-203A(1) and (2) appear still to say that upon receipt of an application to appropriate the waters of the state, the department "shall" prepare the appropriate notice and "shall" cause it to be published. If there is some other applicable law, we would appreciate a citation to it.

Second, you say it is not a given that there is any "saved water" available for appropriation, and that it appears the application violates an understanding between Ted Sorenson and the Birch Creek Water users which allowed his application for a Hydro-power right to be approved. Again, our understanding must be deficient. We thought IDWR itself had determined in 1985 that there would be a saving of water in the construction of the Hydro-Electric facility from elimination of 3,000 feet of Birch Creek Channel and several miles of the old Reno Ditch. That decision was affirmed on appeal to the District Court. We have learned in recent times, in another proceeding, that IDWR does not necessarily accept that it is bound by its prior decisions affecting water rights, but does it also take the position that it is not bound by a decision of the District Court on appeal?

We are puzzled by your reference to an understanding between Ted Sorenson and the Birch Creek water users which allowed approval of the hydro-power right. We cannot recall any such understanding. We thought the permits to divert the water and construct the hydro-power plant were granted only after litigation with and over the protests of the potentially affected Birch Creek water users. In fact, those same downstream water users are presently being significantly benefited by the presence of the saved water in the Reno Ditch after it leaves the power plant, illegally, as stated in Idaho Code §42-201(2).

Finally, you appear to have prejudged the issue of mitigation as well as whether there is saved water available to appropriate. We understood the purpose of the moratorium was to prevent new appropriations of water during a serious drouth, but we do not disagree that one way to insure no new development is to prevent additional land from being irrigated. However, your references to land which has been irrigated in the past becoming new ground for moratorium purposes, and your conclusion that Birch Creek Ranches' proposal to take out of production an equivalent amount of land to that which would be placed in production

MICROFILMED

MAY 27 1988

Mr. Ron Carlson
February 21, 1997
Page 3

is not mitigation, convinces us that you must be referring to rules or laws we have not reviewed.

In summary, we apparently need a good deal more explanation and citation to authority to be able to understand why the merits of this application must be prejudged even before the application is processed, and why, if it is receipted, it must reside in your hold file for an extended period of time. Your further response will be greatly appreciated.

Very truly yours,



Kent W. Foster

pc. Carl J. Dreher, Director
G:\WPDATA\KWF\6936\IDWR0220.LTR:sjw

MICROFILMED

MAY 27 1999

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
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MARIE T. TYLER
JOHN G. SIMMONS
ROBERT M. FOLLETT
FREDERICK J. HAHN, III
SHAN B. PERRY

U.S. BANK OF IDAHO BUILDING
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P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
FACSIMILE (208) 523-9518
E-MAIL HOLDNLAW@SRV.NET

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

March 5, 1997

Mr. Gary Spackman
IDAHO DEPARTMENT OF
WATER RESOURCES
2735 Airport Way
Boise, Idaho 83705-5082

Re: Applications of Ted S. Sorenson, d/b/a Sorenson Engineering, for transfer of
saved water rights

Dear Mr. Spackman:

We certainly appreciate your letter of February 25, 1997. It is the first response we have had to any of our recent requests for refunds when we have withdrawn an application on behalf of Mr. Ted Sorenson or one of the entities in which he is involved.

There are actually three applications which have been withdrawn, and filing fees totalling \$185.

The first two applications were initially filed on November 29, 1993. (See attached transmittal letter). Harold Jones returned our first check and requested a larger one. (See Harold's memo to us of 12/01/93). We then sent our check No. 54136, dated 12/02/93 in the amount of \$135, pursuant to his request. A copy of our check No. 54136, both front and back, showing it was deposited to the State Treasurer's account by IDWR is enclosed.

Ted Sorenson's object in filing these two applications was (1) to address the issue of transmission loss when the upper Birch Creek land is not irrigated and the water is allowed to flow down to the new Reno Diversion, and (2) to utilize the substantial amounts of water saved by elimination of 3,000 feet of old Birch Creek channel and 8 to 10 miles of the old Reno Ditch, which was replaced with PVC lined channel and pipeline.

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MAR 7 1997

Mr. Gary Spackman
March 5, 1997
Page 2

After the filing of these two applications, we did hear from you. As we understood it, you questioned the existence of any right to the use of the saved water. In your letter of March 7, 1994, you indicated either Keith or Norm would be in Idaho Falls on March 16, and would visit with us further. We did eventually visit by telephone with Norm, and I thought we had worked out an approach that would be more acceptable to IDWR. That is the reason for the filing of the third application on May 17, 1994. (Actually the second application dealing the saved or salvaged water - see copy of our letter to you dated May 17, 1994). A copy of our check No. 55162, also dated May 17, 1994, in the amount of \$50, is also enclosed, again showing on the back that it was paid to the State Treasurer by IDWR.

Just prior to filing this third application, we wrote to you and Harold Jones (both letters are dated May 12, 1994, and copies are enclosed) withdrawing the first two applications and requesting refunds. (I see I requested the wrong refund of Harold - the \$45 had been changed to \$85). So far as I am aware, none of the three applications was ever receipted or processed, nor did we ever receive a refund. Our most recent withdrawal of the third application and request for refund is dated February 5, 1997, and was directed to Norm. (A copy is enclosed). I had apparently misunderstood the discussions with Norm.

It does appear that our checks were cashed. Although it is hardly worth your time and effort, we wanted to follow up and disclose what our records show. We apologize for troubling you with this trivial matter, but do appreciate your attention.

Very truly yours,



Kent W. Foster

Enclosure

pc. Norm Young / letter only

Ted Sorenson / letter only

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MICROFILMED

MAY 27 1995

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 A32-00067
Date Received
Receipt Number 600003/M000115

RECEIVED

APR 10 1990

Department of Water Resources
Eastern District Office

AMENDED
NOTICE OF CLAIM

TO A

WATER RIGHT

ACQUIRED UNDER STATE LAW

RECEIVED

APR 10 1990

Department of Water Resources
Eastern District Office

1. Name of Claimant(s) Birch Creek Ranches, Inc. Phone (208) 523-0620
%Holden, Kidwell, Hahn & Crapo

Mailing Address P.O. Box 50130, Idaho Falls, Idaho Zip 83405

2. Date of Priority (Only (1) per claim) September 10, 1882

3. Source of water supply (a) Birch Creek

which is tributary to (b) Sinks

- 4.a. Location of existing

point of diversion is: Township 10N. Range 29E. Section 11.

1/4 of NE 1/4 of SW, Govt. Lot, B.M., County of Clark

Additional points of diversion if any: T.10N. R.29E. S.14. NE NE: S.24
NW NE, SE NE: T.10N. R.30E. S.29. NW SW: S.32. NW NW, SE SW.

- 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.

Pumps to sprinklers, headgates to ditches for flood irrigation.

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MAY 27 1990

Condition 10 - This condition reserves jurisdiction for the department to retroactively determine appropriate losses to charge for this transfer or any other rights being transferred in order to provide equity among the water users on Birch Creek.

Please advise me at your earliest convenience how you wish the department to consider your April 4, 1997 letter in order that the department can pursue subsequent actions if appropriate.

If you have questions, feel free to contact me.

Sincerely,

NORMAN C. YOUNG
Administrator

c: IDWR - E. Region
Harold Jones
Breck Barton
Mac Wagoner

insert:

*I do not recall the conversation with Ted
Penson concerning regulating stockwater. Usually IDWR
does not incorporate the substance of private
agreements into its water right decisions
unless necessary & appropriate for the
administration of the decision. In the case
of this transfer the approval is to divert
0.8 cfs for stockwater at the new point of
diversion during the period*

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MAY 27 1995

date

Kent Foster
HOLDEN, KIDWELL, HAHN & CRAPO
330 Shoup Ave, 3rd Floor
Idaho Falls, ID 83402

RE: TRANSFER NO. 3827 IN THE NAME OF BIRCH CREEK RANCHES, INC.

Dear Mr. Foster:

The department has reviewed your letter dated April 4, 1997 and seeks clarification of your intent with respect to it. The department wants to know whether you want the letter treated as a petition for reconsideration in the above referenced matter or as a letter of inquiry. As you know, the filing of a petition for reconsideration will delay the effective date of final action in this matter contrary to the intent you stated in your letter.

The following explanation with respect to the Conditions of Approval and Remarks hopefully will provide more information for you.

Condition 1 - You have asked whether there is any enforcement mechanism available relative to diversions during the non-irrigation season. Water districts have the option of authorizing their elected watermaster to serve year-round. Such on-going regulation may lend itself to the concern you have expressed. One unknown at this point, however, is to know what rights exist for non-irrigation season use such as for stockwater. As you know, those rights will have to be determined in the ongoing Snake River Basin Adjudication.

(Handwritten: also, section 42-608(5) Idaho Code authorizes the watermaster to serve upon receipt of a petition to extend the watermaster's term of service upon receipt of a petition)

Condition 8 - The 1,186.5 AF annual limitation was determined by multiplying 339 acres by 3.5 acre feet per acre. The volume is a field headgate requirement which is not necessarily the same as a volume authorized at the point of diversion. As a practical matter, enforcement of a field headgate requirement would be difficult since losses for each individual delivery system would have to be determined and considered in arriving at the authorized volume to divert at the source of water. As is often the case, full time diversion of irrigation rights will produce a volume of water larger than required by most crops and larger than authorized by many water rights.

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MAY 22 1998

Law Offices

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

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Terry L. Crapo
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William S. Holden
(1907-1988)

March 14, 1997

Mr. Norm C. Young
IDAHO DEPARTMENT OF
WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Re: Birch Creek Ranches' Application for Transfer No. 3827

Dear Mr. Young:

We are in receipt of your letter of March 7, 1997, and the copy of Mr. Barton's letter to you of February 28, 1997, which you enclosed. Birch Creek Ranches, through Mr. Ted Sorenson, has asked that we respond as follows.

Mr. Sorenson has agreed and does agree in many respects with Mac and Betty Wagoner. First, he entered into the "Memorandum of Agreement" with the Wagoners in the summer of 1990, under the terms of which, he and Wagoners agreed to trade 4.0cfs of Birch Creek Ranches' earlier priority water rights for 4.0cfs of the Wagoners' water rights, and pursuant to which Wagoners agreed to sell to Sorensons their "high water" rights.

Mr. Sorenson also agrees that some of the terms of that agreement have been completed; for example, deeds conveying the respective water rights to each other have been exchanged and recorded, and the \$15,000 has been paid by Sorensons to Wagoners.

We do not know whether Wagoners have withdrawn their SRBA claim for 10.0cfs of "high water" or not. Formal assignments of notices of claims and change of ownership forms were filed with IDWR by Birch Creek Ranches in June of 1995, but the records of IDWR with respect to change of ownerships were apparently not changed. We received a letter

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MAR 21 1997

Mr. Norman C. Young
March 14, 1997
Page 2

from Gregory J. Taylor of the Idaho Falls office of IDWR, dated June 19, 1995, indicating the changes would not be made until "the transfers are approved". Perhaps Wagoners received a similar notice.

As nearly as we can tell, Wagoners do not yet believe they are bound by the provisions of paragraph 6 of the agreement which provides that they will not divert, for stockwatering purposes, more than .8cfs of water prior to the irrigation season. Last year, diversions in excess of 2.0cfs were measured in the Wagoner ditch on more than one occasion well in advance of the irrigation season.

It is also true that in the spirit of the agreement, Wagoners filed an application for transfer of their water rights to D&D lands, and Birch Creek Ranches filed two amended applications for transfer, one to transfer 4.0cfs to Wagoner lands, and the second to transfer the balance to D&D lands. This all took place in January of 1991 according to our records. It appears that the first amended application for transfer of Birch Creek Ranches was subsequently renumbered 3827.

A time did come during the intervening delays in the processing of these applications when Wagoners, through Mr. Barton, sought to bifurcate the proceedings and have the department proceed with processing of only application 3827. We had the same objections then as we do now, and we understood IDWR to have decided against bifurcation.

Last January, 1996, we received a telephone call from Mr. Harold Jones of the Idaho Falls office of IDWR from which I somehow gained the understanding that Wagoners had filed a new application for transfer to change the place of use for the 4.0cfs of Simmons rights to the Wagoner lands. As it turns out, I apparently misunderstood, but in reliance on what we did understand, we then prepared and filed the amended application to transfer the Simmons, Woodie and Wagoner rights to the new lands acquired by Birch Creek Ranches. We only recently learned that, in fact, Wagoners did not file a new application, but rather relied upon Birch Creek Ranches' prior amended application which was renumbered 3827.

We would think that Wagoners could have filed a new application, which is what we thought they had done for over a year. We thought, when we filed Birch Creek Ranches companion application, that they would be processed together. Since that is not the case, we have no particular problem with Wagoners relying on the pending application of Birch Creek Ranches, No. 3827; after all, the protests of Newmans and D&D, they claim, have been withdrawn.

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MAY 2 1998

Mr. Norman C. Young
March 14, 1997
Page 3

But application number 3827 is still an amended application of Birch Creek Ranches, not Wagoners. We don't recall that it has been formally assigned to Wagoners, and we believe they have no legal control over it, however beneficially interested in the outcome they may be. But we recall that there was an issue raised by the protests, which is common to both 3827 and amended 3853, whether it is now asserted with respect to 3827 or not. That issue is, of course, the amount of transmission losses to be charged against the various rights and portions of rights for which the points of diversion are proposed to be moved down stream. We have never believed any of the rights should be charged a greater loss than that which will actually occur from the proposed change, and hence we would not expect there to be a significant charge against the 4.0cfs from the Simmons' diversion down to the Wagoner diversion. On the other hand, charges of 30% to 50% have been suggested by others, and if the final decision were to be in that magnitude, then the portion to be assigned to the 4.0cfs proposed to be transferred to Wagoners may potentially be significant.

Mr. Barton claims that the Simmons' water has been delivered to the Wagoner ranch for more than five years. Since there is no approved transfer, we would think the water delivered to Wagoners has been delivered pursuant to their own rights. But they have clearly been receiving the full 4.0cfs, and there is obviously no likelihood that they will be prejudiced or injured in any manner if that status continues until the processing of both of Birch Creek Ranches' applications, 3553 and 3827, are completed.

Perhaps because the protests to 3827 have been withdrawn, Wagoners will not need to participate in any of the proceedings, but that is, of course, their decision. We strongly object to any final action on application No. 3827 until the final processing of application No. 3553 is completed.

Thank you for your continued attention to this matter.

Very truly yours,



Kent W. Foster

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TOTAL P.04

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MAR 17 1998



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

March 7, 1997

Kent W. Foster, Esq.
HOLDEN KIDWELL HAHN
& CRAPO, P.L.L.C.
P.O. Box 50130
Idaho Falls, Idaho 83405-0130

Re: Mac and Betty Wagoner Transfer Application No. 3827

Dear Mr. Foster:

Enclosed for your information and comment is a copy of a letter dated February 28, 1997, from attorney Breck Barton requesting on behalf of the Wagoners that the Department take final action on Transfer No. 3827. Because the interests of your client Ted Sorenson are involved in this transfer proceeding your view on this matter would be appreciated. Please respond within the next ten days.

Sincerely,



NORMAN C. YOUNG

Administrator

Water Management Division

Enclosure

cc: Breck H. Barton, Esq.

MICROFILMED

MAR 10 1997

Law Offices of
Breck Barton & Associates, P.A.

70 North Center, Suite 2
P.O. Box 100
Rexburg, ID 83440

Breck H. Barton, J.D.
Gary L. Longmore, J.D., LL.M

RECEIVED
MAR 05 1997
Department of Water Resources

(208) 356-4880
FAX (208) 356-4882

February 28, 1997

Mr. Norm Young
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720-9000

RE: Mac and Betty Wagoner Transfer application #3827

Dear Mr. Young:

I write for and in behalf of my clients, Mac and Betty Wagoner. I write to request that the department formally move to approve the exchange of water rights previously entered into and consummated between the Wagoners and Ted Sorenson. The department has a copy of the agreement entered into by the Wagoners and Sorenson for the exchange of their water rights. These water rights have in fact been exchanged. Consideration has been paid and deeds have been exchanged. Mr. Wagoner has recorded his deed. I enclose a copy of those deeds for your review.

Several years ago and concomitant with this exchange certain applications for transfer were filed. Ted Sorenson filed application for transfer #3827 under the name of Birch Creek Ranches, Inc. This application proposed to transfer the exchanged water from the Simmons ranch to the Wagoner ranch. This application is **still pending**. It has been the subject of a stipulation agreeing to the exchange by D&D Ranches Inc., and Mr. LaVar Newman. You have copies of their consents in your file.

Mr. Wagoner is now the owner of the water rights referenced in #3827. He demands that the department formally approve his exchange. It is ill conceived of the department and morally wrong to delay approval of this exchange. In fact, this water has been delivered to the Wagoner ranch and has been used by the Wagoner Ranch for more than 5 years.

Mr. Wagoner filed application #4166. This proposed to move the water exchanged to Mr. Sorenson to a point of diversion then specified by Mr. Sorenson. In fact, this application is now dead as the water rights mentioned therein have been transferred to Mr. Sorenson and are now his property. Further, these water rights now form a part of amended application #3553 recently filed by Ted Sorenson and for which publication for purposes of comment and/or protest has now been completed. Mr. Wagoner formally withdraws application #4166 if you desire to so note on your records but it is our position that this application is dead inasmuch as the water rights are now included in Mr. Sorenson's amended application #3553.

As part of the hearing process in application #3553 amended the department can readily ascertain and easily handle any move of those water rights formerly appurtenant to the Wagoner property to some location down stream. It would seem that defacto the exchange has been accomplished by all concerned except for the department having made official record of the same. There is absolutely no reason for the department to involve Mr. Wagoner in another round of protracted hearings on water rights to which he has no claim nor interest. Effectively, Mr. Wagoner is now the owner of application #3827 inasmuch as it describes his water rights and Mr. Sorenson is the owner of application #4166, which is dead, as the water rights therein have been fully consumed and dealt with by currently pending application #3553 amended.

In prior hearings we requested that the issue of the exchange be bifurcated. The department refused to do so. We still believe that the department was wrong in that determination and needlessly caused Mr. Wagoner significant legal expense as a participant in an unnecessary hearing. Please bear in mind that it has only been a few years since the department would readily have approved this exchange given the statutory basis previously existing for the exchange of water rights. In amending our water rights law we do not believe the legislature intended to prohibit exchanges of waters nor do we believe they intended to have the department exercise unnecessary and unwieldy procedures in effecting a simple exchange of water right priority dates.

Any currently pending protest to application #3553 amended can be dealt with as the same pertains to a new point of diversion and/or place of use for the water rights exchanged to Mr. Mr. Sorenson. The effect has been for the past several years that the water rights formerly appurtenant to the Simmons property have been appurtenant to the Wagoner property. Any transfer of water rights previously held by Wagoner can easily be dealt with in the currently pending application by Mr. Sorenson.

We request that the department take this action before any action whatsoever is taken concerning application #3553 amended as now pending. We request that such be done in 10 days. The patience of the Wagoners has been taxed and resources have been stretched.

It is not our intention to go through additional hearings that are needless to finalize this exchange.

As a final note, the departments records are absolutely clear that there are no protestants to this exchange of the water rights. Should Mac desire to move his water rights acquired from the Simmons property to some location other than his own such would be subject to publishing and protest. Effectively, Mr. Sorenson now desires to move the water rights acquired from Mr. Wagoners ranch to some location other than the Simmons property. Such can be dealt with effectively in the currently pending application #3553 amended. Please, take the action necessary to approve the exchange without the necessity of further legal involvement.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Breck Barton".

Breck Barton

BB/eh

Enclosure

cc: Mac & Betty Wagoner
Ron Carlson
Harold Jones

Page 3 MICROFILMED

MAY 27 1989

QUITCLAIM DEED

THIS INDENTURE, made this 20th day of September, 1994, between BIRCH CREEK RANCHES, INC., hereinafter referred to as "FIRST PARTY", and MAC WAGONER and BETTY WAGONER, husband and wife, hereinafter referred to as "SECOND PARTY", whose mailing address is:

Box 296
Dubois, Idaho 83423

WITNESSETH:

THAT FOR AND IN CONSIDERATION of ONE DOLLAR (\$1.00) and other good and sufficient consideration, receipt whereof is hereby acknowledged, FIRST PARTY, having been duly authorized by resolution of its Board of Directors, does by these presents hereby release, remise and forever quitclaim unto SECOND PARTY and their heirs, assigns or successors in interest, all of FIRST PARTY's right, title and interest in and to the following described water rights:

**IDAHO DEPARTMENT
OF WATER RESOURCES
IDENTIFICATION NO.**

**AMOUNT
IN CFS**

**PRIORITY
DATE**

SOURCE

32-0067	3.2 cfs	09/10/1882	Birch Creek
A portion of 32-0090	.8 cfs	05/10/1886	Birch Creek

The season of use for said water rights shall hereafter be from April 1st of each year to and including October 15th of the same year; provided, however, that SECOND PARTY 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

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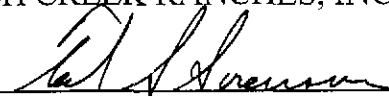
MAY 27 1999

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. Regardless of the date diversions under such rights commence, and regardless of whether water is or is not diverted under such rights 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.

TO HAVE AND TO HOLD said water rights unto said SECOND PARTY, their heirs, assigns or successors in interest forever.

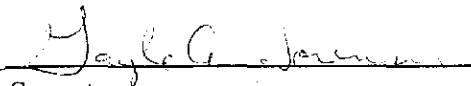
IN WITNESS WHEREOF, FIRST PARTY has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary pursuant to said resolution, the day and year first above written.

BIRCH CREEK RANCHES, INC.

By: 

Its: President

(Corporate Seal)

Attest: 

Its: Secretary

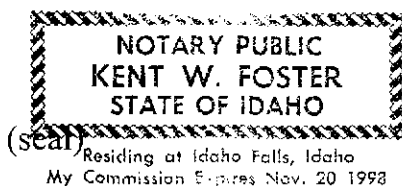
MICROFILMED

MAY 27 1969

STATE OF IDAHO)
)ss.
 County of Bonneville)

On the 20th day of September, in the year 1994, before me, the undersigned, a notary public in and for said State, personally appeared Ted S. Sorenson and Gayle A. Sorenson, known or identified to me to be the President and Secretary of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Kent W. Foster
 Notary Public for Idaho
 Residing at Idaho Falls, Idaho
 My Commission Expires: 11/20/98

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Microfilm No. 46552
25 Day March 19 96
 At 16:50 O'Clock P.M.
JO ANN S. TAVENNER
 Clerk Co. Recorder
 Fee \$ 9.00
Marcia J. Belcher Deputy
 Recorded at Request of
Breck Burton & Assoc.

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Page 1 of 8STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 3827

AMENDED APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Feb 18 1991

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

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. 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</u>	<u>05/10/1886</u>	<u>.8 cfs</u>	<u>Irrigation</u>	<u>04/01</u> to <u>11/01</u>
				to _____

2. Total amount of water being transferred 4.0 cubic feet per second and/or _____ acre-feet per annum.3. Source of water Birch Creek tributary to Sinks

4. 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>5</u>									<u>20</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>

MICROFILMED

NOV 27 1995

Witness my hand this _____ day of _____, 19____

This is to certify that I have examined Application for Transfer of Water Rights No. _____, subject to the following limitations and conditions:
And said application is hereby _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

d. Remarks:

Land will no longer be irrigated.

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

trust, mortgage or contract agreeing to the proposed changes.

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

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.

PART 1

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	

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MAY 2 1988

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.

NO If yes, describe

ON

If yes, describe

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

2. Point(s) of Divergence:

2. Point(s) of Diversion:

[illegible]

3. Lands irrigated or place of use:

[illegible]

Total acres

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

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

2. Point(s) of Diversion:

[illegible]

3. Lands irrigated or place of use:

[illegible]

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

1. amount .8 cfs for Irrigation purposes from 04/01 to 11/01
2. Point(s) of Diversion: See Attachment No. 2
3. Lands irrigated or place of use: See Attachment No. 3

Lot	%	%	%	Sec.	Twp.	Rge.	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	Totals

Lot	%	%	%	Sec.	Twp.	Rge.	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	Totals

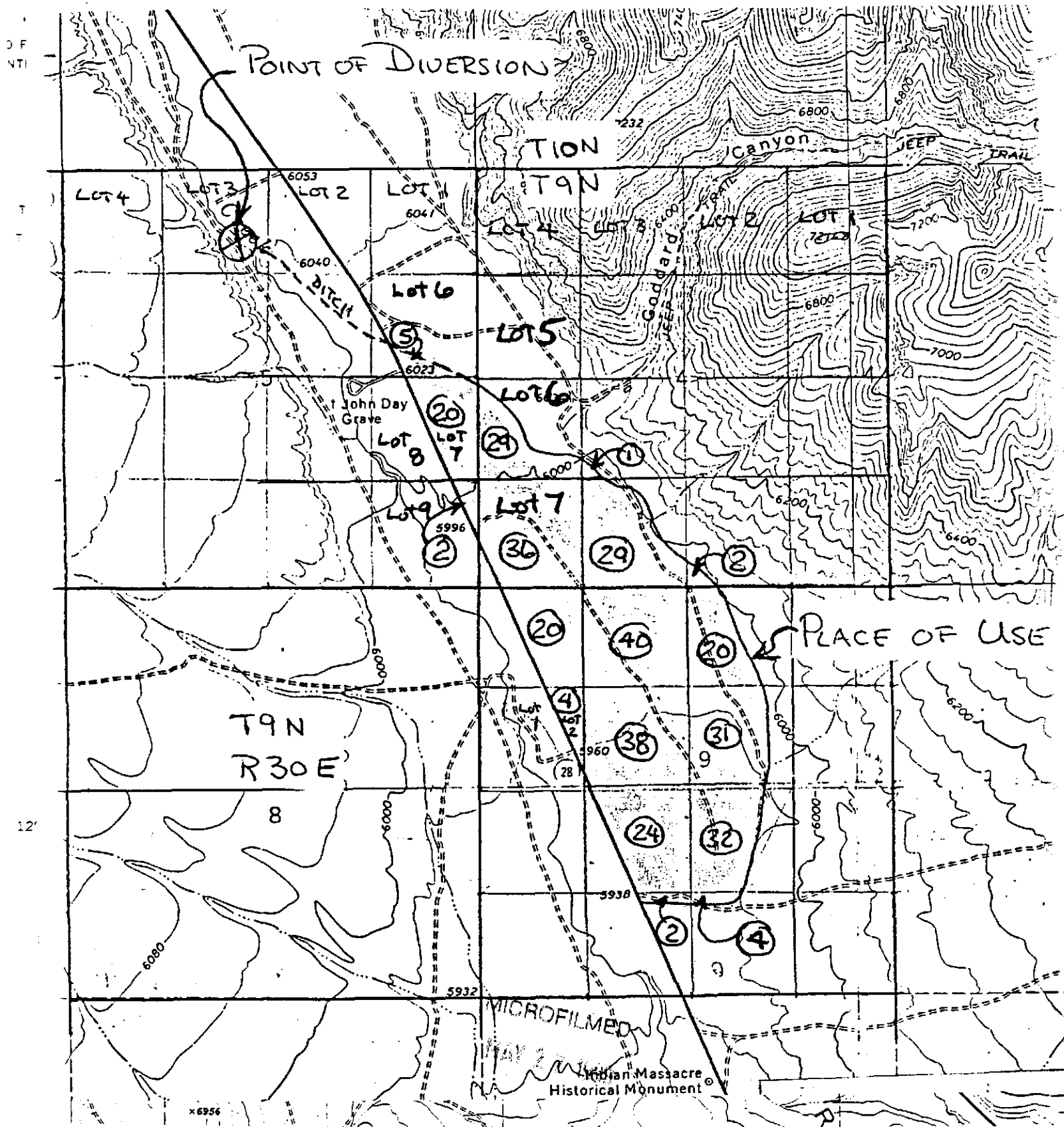
C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change) but see accompanying amendment application for transfer to transfer this portion to Lands of B&D Enterprises, Inc.
1. amount .8 cfs for Irrigation purposes from 04/01 to 11/01
2. Point(s) of Diversion: See Attachment No. 2
3. Lands irrigated or place of use: See Attachment No. 3

Lot	%	%	%	Sec.	Twp.	Rge.	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	Totals

Lot	%	%	%	Sec.	Twp.	Rge.	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	Totals

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	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				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.

Paul S. Swenson
(Signature of Applicant)

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

John G. Simmons
(Notary Public)

My commission expires 2-19-91

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by HWS Date 2-12-91 Protest filed by _____

Prelim. check by KCW Fee 50.00

Receipted by HWS 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 _____

MICROFILMED

MAY 27 1999



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

FEB 20 1994

CECIL D. ANDRUS
GOVERNOR

Department of Water Resources
Eastern District Office
R. KEITH HIGGINSON
DIRECTOR

January 28, 1994

Mr. Kent Foster, Esq.
Holden, Kidwell, Hahn & Crapo
West One Bank
P.O. Box 50130
330 Shoup Avenue
Idaho Falls, Idaho 83405

Mr. Breck Barton, Esq.
Barton & Associates
P.O. Box 100
Rexburg, Idaho 83440

Mr. George Petersen, Esq.
Petersen, Moss, Olsen,
Meachan & Carr
485 "E" Street
Idaho Falls, Idaho 83405

Mr. Blair Grover, Esq.
Grover & Walker, Chtd.
P.O. Box 36
Rigby, Idaho 83442

Dear Gentlemen:

On November 29, 1993, the department received a letter from Breck Barton, requesting that the application for transfer filed by his clients, Mac and Betty Wagoner, be bifurcated from applications for transfer filed by Birch Creek Ranches, Inc. All of the applications were originally protested, substantially by the same parties. In addition, the applications raised similar issues of fact and law. The letter was accompanied by conditional withdrawals of protest executed by LaVar Newman and D & D Ranches. The conditions will be discussed later in this letter.

Almost simultaneous with receipt of the letter from Breck Barton, the department received a letter from Kent Foster (Birch Creek Ranches), reviewing the history of the filings, and requesting a hearing. In addition, Birch Creek Ranches filed another application for transfer (or application for amendment) of a permit to appropriate water, seeking to divert 5 cfs which was originally dedicated for maintenance of riparian growth in the Birch Creek channel below the power canal diversion.

I reviewed all of the files, and the history of the filings. I do not want to restate all of the history, but feel it is important to note that after the hearing regarding the original application for transfer, Wagoners and Birch Creek Ranches agreed to attempt to exchange water rights. Birch Creek Ranches agreed to transfer 4 cfs of the earliest water right from the Simmons ranch, which Birch Creek Ranches had acquired, to Wagoners' property, in exchange for a transfer by Wagoners of their water rights to 960 acres irrigated downstream from the Birch Creek Ranches power plant. As a result, Birch Creek Ranches withdrew the first application for transfer. Three additional applications for

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7/15 2/1 1994

transfer. (1) An application by Wagoners proposing to move their water rights to the 960 acres: (2) An application by Birch Creek Ranches seeking to transfer 4 cfs to the Wagoner property, and; (3) an application by Birch Creek Ranches proposing to move the remainder of the water rights from the Simmons property to the 960 acres. These are the applications which were most recently protested, and are now pending.

The withdrawals of protest, filed by Breck Barton, would not permit approval of the transfers now pending before the department. As an illustration, the withdrawal of objection signed by D & D Ranches states that D & D does not object to "granting to Birch Creek Ranches, Inc., the . . . water rights measured at the current points of diversion held by Birch Creek Ranches, Inc., that is those points of diversion located physically on or adjacent to the Simmons ranch" D & D then specifically reserves any objections to transferring the water to the 960 acres specified in the Wagoner application for transfer and one of the Birch Creek Ranches applications for transfer. As a result, the Department of Resources cannot approve Wagoners' application for transfer because it does not propose a point of diversion or place of use identified in the withdrawals of protest. In fact, the protestants continue to object to a transfer of water to the point of diversion and place of use specified in the Wagoner application for transfer. These objections are substantially identical to objections to Birch Creek Ranches' applications for transfer, and, without some modification in the Wagoner transfer, the department should not bifurcate the proceedings.

If Wagoners want to amend the application for transfer, specifying the Simmons ranch as the point of diversion and place of use, the department will bifurcate the proceedings, and publish notice of the proposed change. If the amended Wagoner application is approved after the publication, Birch Creek Ranches would have to transfer the water from the Simmons property to the 960 acres.

Rather than bifurcate the matter, a quick response to Mr. Foster's request is appropriate. I suggest the date of March 22, 1994, as a hearing date for these protested applications for transfer.

I also propose that the parties determine by February 28, 1994, whether the prior record can be used in the matter. As I recall, the only party who did not previously participate in the hearing is LaVar Newman, represented by Blair Grover. The tapes of the prior hearing were retained by our eastern regional office in Idaho Falls where they can be reviewed. If I have heard not from the parties regarding a stipulation for use of the record by February 28, I will assume that we must fully redevelop the record because the three pending applications are new applications for transfer. As a result, I will schedule two days for the hearing, instead of one, to insure completion.

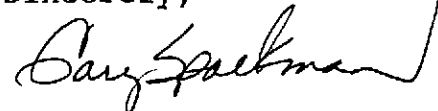
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MAY 27 1993

The latest application for transfer filed by Birch Creek Ranches is not sufficiently similar in fact or in law to warrant waiting to incorporate it into the upcoming hearing on March 22. As a result, the department will publish notice of the new application, and the new application will be considered separately.

Please notify me promptly if the proposed hearing dates conflict with your calendars.

Sincerely,



Gary Spackman

cc: Eastern IDWR office

MICROFILMED

MAY 7 1989

APPLICATION FOR TRANSFER OF

WATER RIGHT NO. 32 0067 32 0090

RECEIVED

WATER DISTRICT 32

MAY - 7 1991

WATERMASTER DONALD W. SHENTON

Department of Water Resources
Eastern District Office

DATE: MAY 4, 1991

COMMENTS: Bed losses have not been mentioned in

this Short Reach. However I understand this transfer to
be more of an exchange of water right priorities
and that the physical-actual diversion of water
will not change in any way. (only the priority language)

IF this is true there will not be an injury to an existing
water right.

☒ I do endorse approval of this change.

☐ I do not endorse approval of this change.

See
Below

I recommend the following conditions of approval:

IF the above is true (exchange only) then I endorse
without conditions.

IF not then I would not endorse with out bed

loss
amounts being deducted from the application.

Donald W. Shenton
Watermaster

MICROFILMED
MAY 21 1991

MEMORANDUM

TO: FILE NOS. 32-00067 & 32-00090

FROM: PAM SKAGGS/^{es}STATE OFFICE

SUBJECT: TRANSFER NO. 3827

DATE: June 20, 1996

=====

Transfer No. 3827 was filed to change the point of diversion and place of use under all of Right No. 32-00067 and half of Right No. 32-00090, splitting this right into parts A and B. This is one of two transfers (Amended Transfer Application No. 3553) being proposed to complete long-term discussion and problems between the primary Birch Creek water users.

An exchange of water rights was made between Wagoners and Sorenson of Birch Creek Ranches to insure that Wagoners have the senior priority rights on the Creek. The prior owner of Sorenson rights, Simmons, held multiple rights described under Transfer No. 2165 serving 960 acres. The Wagoners have always irrigated 339 acres with 4.0 cfs of water under an 1889 priority right and 2.0 cfs of high water rights.

The Wagoners exchanged their 1889 right (32-00102) for the earlier priority rights described under this transfer. The remaining high water rights were sold to Sorenson and are proposed removed to a new place of use under Amended Transfer No. 3553. These rights will be limited to irrigation of 621 acres through this approval, retaining the original net total irrigated acres under all these rights. Stockwater use was not approved as an added consumptive use since no acres were proposed dried up to compensate.

Season of use and diversion volume were adjusted to current standards. Recommended conditions include combined limits, reduction of irrigated acres under the remaining Sorenson rights, proposed abandonment of rights in excess of standard if not transferred from Wagoners land as proposed under Transfer No. 3553, watermaster control, measuring device, irrigation overlap right-of-way and standard transfer conditions.

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MAY 27 1996

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION
IDAHO FALLS ID
ph. (208) 525-7161

FAX NO. (208) 525-7177

TRANSMITTAL COVER SHEET
OMNIFAX

TO: PAM SKAGGS FROM: H. W. JONES
DOCUMENT DESCRIPTION: Amended Tr. 3553

TOTAL NUMBER OF PAGES (Including this page): 4

*
* BILLING ADDRESS: _____
*
*
* NO. OF PAGES _____ COST/PAGE _____ TOTAL CHARGE _____

MICROFILMED

7/1/96

Rev'd 6-18-96

Proposed Birchcreek Transfer - Amended T# 3553

T# 3827 (Wagener Rts/PU) + T# 3553 (Birch Creek Ranches
339 Acres Rts + PU)

1120 Acres
(1024 TOTAL Acres)

✓ Woodie Rt No. 32-00101 - 64 Acres claimed 1160
2 Acres less 2430-600-77-2000 instead of Max possible

Form 222
1-87Page 1 of 55STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No.

3553 Amended~~AMENDED~~ APPLICATION FOR TRANSFER OF WATER RIGHTS
PART IName of Applicant Birch Creek Ranches, L.L.C. Phone (208) 523-0620
Post Office address c/o Holden, Kidwell, Hahn & Crapo, P.L.L.C., P.O. Box 50130, Idaho Falls, Idaho 83405

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes Applicant has acquired lands which can be irrigated with water from the lower reach of Birch Creek and desires to change the point of diversion and place of use for the rights listed herein.

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

RECEIVED

APR 02 1996

Department of Water Resources
Eastern Region

1. Right Number _____ Priority _____ Amount (cfs/ac-ft) _____ Nature of Use _____ Period of Use _____
See Attachment No. 1 _____ to _____
 _____ to _____
 _____ to _____
 _____ to _____
2. Total amount of water being transferred 23.6 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Birch Creek tributary to _____ sinks _____
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	SW	34	9N	30E	Clark	New Reno Diversion

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
9N	32E	36	40	40	40	40	40	40	40	40									320
9N	33E	31									40	40	40	40	40	40	40	40	320
		32	40	40	40	40	40	40	40	40	40	40	40	40					

Total Acres 1,120

MICROFILMED

APR 27 1996

ATTACHMENT NO. 1

RECEIVED

ADD: 2 1996

Department of Water Resources
Eastern Region

LIST OF WATER RIGHTS FOR PART 1B.1.

RIGHT NO.	PRIORITY	AMOUNT	NATURE OF USE	PERIOD OF USE
✓32-00093	May 10, 1886	1.6cfs	Irrigation	04/01 to 11/01
✓32-00090A	May 10, 1886	.8cfs	Irrigation	04/01 to 11/01
✓32-00068	May 10, 1887	3.2cfs	Irrigation	04/01 to 11/01
✓32-00061C	May 10, 1888	.4cfs	Irrigation	04/01 to 11/01
✓32-00069	May 10, 1888	3.2cfs	Irrigation	04/01 to 11/01
✓32-00089	May 10, 1888	2.5cfs	Irrigation	04/01 to 11/01
✓32-00092	May 10, 1888	2.5cfs	Irrigation	04/01 to 11/01
✓32-00091	May 1, 1901	.5cfs	Irrigation	04/01 to 11/01
→ 32-00101	June 4, 1909	2.9cfs	Irrigation	04/01 to 11/01
32-00102	May 10, 1889	4.0cfs	Irrigation	04/01 to 11/01
✓32-00073	May 15, 1909	.2cfs	Irrigation	04/01 to 11/01
✓32-00085	May 10, 1910	.2cfs	Irrigation	04/01 to 11/01
✓32-00077	May 15, 1910	.2cfs	Irrigation	04/01 to 11/01
✓32-00086	May 1, 1911	.2cfs	Irrigation	04/01 to 11/01
✓32-00078	May 15, 1911	.2cfs	Irrigation	04/01 to 11/01
✓32-00087	May 1, 1912	.2cfs	Irrigation	04/01 to 11/01
✓32-00079	May 15, 1913	.8cfs	Irrigation	04/01 to 11/01

Simmons
Rts.Woodie
Rt.Wagner
Rts.960 (T#2165)
-339

621 Acres

64 Acres
claimed
339 Acres
claimed

✓ Purchased from Wagner / High water rts.

TOTAL ACRES = 1024

Q:\WPDATA\KWP\6973\BCHLST.gw

32-00102 exchanged for all of 32-00067 + .80 cfs of 32-00090 (339 Acres)

MICROFILMED

MAY 27 1999

TRANSFER REVIEW SHEET
(04-96)

Transfer # 3827

Date Reviewed 04-11-96 28

Right(s) 32-00067 _____
32-00090 _____

☒ **Print Split Summary** ☒ **Run POU Comparison Report**
WRQ11

B:Change P/D C:Add P/D D:Change P/U E:Change Nature of Use
F:Change Period of Use G:Other H:Change P/D & Add P/D
I:Change P/D & P/U J:Add P/D & Change P/U

Proof of Ownership Contract Sale / Quitclaim Deed to Wagener / Tax Notices
KCW researched & completed ownership 4-1-91

Transfer 32-00067 ☒ **All of Right** 32-00090 ☒ **Portion of Right**
Resulting Split(s) _____
32-00090 A) .8 cfs 6.21 Acre P/U
B) .8 " 33.9 Acre P/U
Totals 1.6 "

Check Transfer Against Recorded Right Season/Vol. B/3.5

(1) ☒ **Priority** (2) ☐ **Use** (3) ☐ **Season** (4) ☒ **Rate** (5) ☐ **Volume**

(6) ☒ **Source** (7) ☐ **P/D** (8) ☐ **P/U** (9) ☒ **Proof/Owner** (10) ☒ **Map**

(11) 32 **Water District** (12) Yes **Pertinent Conditions** (13) No **Expansion**
Wm Comment Rcvd 5-7-91 per T#2165 approval Per T#2165

② IRR use only decreed - STOCK cannot be added without resultant reduction
of IRR - STOCK claimed SRBA & will be evaluated thru AT. Region already
discussed probable non-approval of STOCK use in XFER per HWS@Eastern.

③ Standard Season 4-15 to 10-15

⑤ Standard VOL 3.5 af/aere (Var) 32-00067 = 1166.5 af/a + 32-00090 B = 290.4 af/a (Var)
Combined Limit of 1156.5 af/a (Var)

⑦ & ⑧ Change P/D & P/U

1 of 3 pending transfers - Exchange - early priority to Wagener (T#3827)
(T#3553 & 41166)
Amended

Transfer Remarks Combined limit vol & acres - Any rts in excess of 1" per acre
Conditions R04, R43, R30, T04, T07, T08, T09 have 5 years to be transferred
to a new place of use or
shall be considered abandoned.

Database/Processing Notes **Standard** ☒ **Non-Standard** _____

Special edit * Vol, total lines

Add PPU comment to all Simmons Rts. - Delete from 47-

WR_Reports File Birch.lis;
File Deleted _____

Transfer Memo Complete ☒
Database Updated 4-29-99 28

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '*' ARE ADJUDICATION CLAIMS)
(QUARTER-QUARTERS WITH A '?' HAVE DIFFERENT ACREAGE AMOUNTS--CHECK THE DATA BASE RECORDS)

WR-NUMBER	SOURCE	NE				NW				SW				SE				SUM
		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	
=====																		
Proposed P/U under T#3827																		

T09N R30E S 4																		
A3200073	BIRCH CREE	:								:	1	06-29	07-36	29	:		2	:
A3200077	BIRCH CREE	:								:	1	06-29	07-36	29	:		2	:
A3200078	BIRCH CREE	:								:	1	06-29	07-36	29	:		2	:
A3200079	BIRCH CREE	:								:	1	06-29	07-36	29	:		2	:
A3200085	BIRCH CREE	:								:	1	06-29	07-36	29	:		2	:
A3200086	BIRCH CREE	:								:	1	06-29	07-36	29	:		2	:
A3200087	BIRCH CREE	:								:	1	06-29	07-36	29	:		2	:
A3200102	BIRCH CREE	:								:	1	06-29	07-36	29	:		2	:
3207222	GROUNDWATE	:								:	1	06-29	07-36	29	:		2	:
A3210003	BIRCH CREE	:								:	1	06-29	07-36	29	:		2	:
--86 MAP--	C33Q-V 35	:								:	1	06-29	07-36	29	:		2	:
NO QTRS	MAPPING																	10

Lot05-07 Lot06-29 Lot07-36																		

T09N R30E S 5

A3200073	BIRCH CREE	:				5	:									20		2	:
A3200077	BIRCH CREE	:				5	:									20		2	:
A3200078	BIRCH CREE	:				5	:									20		2	:
A3200079	BIRCH CREE	:				5	:									20		2	:
A3200085	BIRCH CREE	:				5	:									20		2	:
A3200086	BIRCH CREE	:				5	:									20		2	:
A3200087	BIRCH CREE	:				5	:									20		2	:
A3200102	BIRCH CREE	:				5	:									20		2	:
3207222	GROUNDWATE	:				5	:									20		2	:
A3210003	BIRCH CREE	:				5	:									20		2	:
--86 MAP--	C33Q-V 35	:				4	:									20		3	:
NO QTRS	MAPPING																	16	:

Lot01-01 Lot02-09 Lot03-02																			

T09N R30E S 9

3200073	BIRCH CREE	:	1	1	1	:	1												:
A3200073	BIRCH CREE	:	20	31		:	40	20	4	38	:	24		2	:		32	4	:
T3200073	BIRCH CREE	:	1	1	1	:	1				:								:
3200077	BIRCH CREE	:	1	1	1	:	1				:								:
A3200077	BIRCH CREE	:	20	31		:	40	20	4	38	:	24		2	:		32	4	:
T3200077	BIRCH CREE	:	1	1	1	:	1				:								:
3200078	BIRCH CREE	:	1	1	1	:	1				:								:
A3200078	BIRCH CREE	:	20	31		:	40	20	4	38	:	24		2	:		32	4	:
T3200078	BIRCH CREE	:	1	1	1	:	1				:								:
3200079	BIRCH CREE	:	1	1	1	:	1				:								:
A3200079	BIRCH CREE	:	20	31		:	40	20	4	38	:	24		2	:		32	4	:

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '**' ARE ADJUDICATION CLAIMS)
(QUARTER-QUARTERS WITH A '?' HAVE DIFFERENT ACREAGE AMOUNTS--CHECK THE DATA BASE RECORDS)

WR-NUMBER	SOURCE	NE				NW				SW				SE				SUM
		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	
T3200079	BIRCH CREE :			I		I												:
3200085	BIRCH CREE :									I		I						:
A3200085	BIRCH CREE :			20		31			40	20		4		38		24		2 : 215
T3200085	BIRCH CREE :									I		I						:
3200086	BIRCH CREE :									I		I						:
A3200086	BIRCH CREE :			20		31			40	20		4		38		24		2 : 215
T3200086	BIRCH CREE :									I		I						:
3200087	BIRCH CREE :									I		I						:
A3200087	BIRCH CREE :			20		31			40	20		4		38		24		2 : 215
T3200087	BIRCH CREE :									I		I						:
A3200102	BIRCH CREE :			20		31			40	20		4		38		24		2 : 215
3207222	GROUNDWATE :			20		31			40	20		4		38		24		2 : 215
A3210003	BIRCH CREE :			20		31			40	20		4		38		24		2 : 215
--86 MAP--	C33Q-V 35 :					1			23	18				20		30	1	1 : 96

WR0749NP
No. 32-00102

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

DATE: 04/10/96
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	SAMUEL GODDARD	05/10/1889	IRRIGATION	00/00 00/00	4.000 CFS	
TOTAL DIVERSION:					4.000 CFS	

Water Source: BIRCH CREEK

Tributary to: SINKS

Stage: DECREED

Pou County:

Remarks: P/D & P/U INCOMPLETE.
ADDITIONAL RIGHTS ON CREEK LISTED IN LATER DECREE.

Dates:	App. Received:	Priority Date:	05/10/1889
	Proof Due Date:	Proof Made Date:	
	Exam Made Date:	Exam Sent to S.O.:	
	Licensed Date:		

Misc: Water District Number: 32D Field Exam Fee:

Audit: 02/22/88 05/22/88 CONVERT

Claimed by Wagoner's in SRBA at Transfer P/U.
This right being exchanged to Birch Creek Ranch
under T#41666 (pending/protested).

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '*' ARE ADJUDICATION CLAIMS)
(QUARTER-QUARTERS WITH A '?' HAVE DIFFERENT ACREAGE AMOUNTS--CHECK THE DATA BASE RECORDS)

WR-NUMBER	SOURCE	NE								NW								SW								SE								SUM
		NE		NW		SW		SE		NE		NW		SW		SE		NE		NW		SW		SE										
		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac									
3200067	T10N R29E S11 BIRCH CREEK																																	
	:										30		35		35	:	30							35		10		40	:	215				
3200061C	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
A3200061C	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
A3200067	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
T3200067	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
3200068	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
A3200068	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
3200069	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
A3200069	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
3200089	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
A3200089	BIRCH CREE :										30		35		35	:	30							35		10		38	:	213				
3200090	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
A3200090	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
T3200090A	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
T3200090B	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
3200091	PASS CREEK :										30		35		35	:	30							35		10		40	:	215				
A3200091A	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
3200092	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
A3200092B	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
3200093	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
A3200093	BIRCH CREE :										30		35		35	:	30							35		10		40	:	215				
--86 MAP--	C33Q-V 35 :										16		39		20	:	36		19				06	:	08		17		36	:	237			

3200067	T10N R29E S12 BIRCH CREEK																	
	:																	
														35				35
3200061C	BIRCH CREE :													35				35
A3200061C	BIRCH CREE :													35				35
A3200067	BIRCH CREE :													35				35
T3200067	BIRCH CREE :													35				35
3200068	BIRCH CREE :													35				35
A3200068	BIRCH CREE :													35				35
3200069	BIRCH CREE :													35				35
A3200069	BIRCH CREE :													35				35
3200089	BIRCH CREE :													35				35
A3200089	BIRCH CREE :													38				38
3200090	BIRCH CREE :													35				35
A3200090	BIRCH CREE :													35				35
T3200090A	BIRCH CREE :													35				35
T3200090B	BIRCH CREE :													35				35
3200091	PASS CREEK :													35				35
A3200091A	BIRCH CREE :													35				35
3200092	BIRCH CREE :													35				35
A3200092B	BIRCH CREE :													35				35
3200093	BIRCH CREE :													35				35
A3200093	BIRCH CREE :													35				35

Original P/U of XFER Rts.

T#3827

(WATER RIGHT NUMBERS THAT BEGIN WITH AN "1" ARE ADJUDICATION CLAIMS)
(QUARTER-QUARTERS WITH A "2" HAVE DIFFERENT ACREAGE AMOUNTS--CHECK THE DATA BASE RECORDS)

WR-NUMBER	SOURCE	NE				NW				SW				SE				SUM		
		NE		NW		SW		SE		NE		NW		SW		SE				
		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac			
--86 MAP--	C33Q-V 35 :												02	19						21
3200067	T10N R29E S13 BIRCH CREEK																			
	:							35	40				15							90
3200061C	BIRCH CREE :							35	40				15							90
A3200061C	BIRCH CREE :							35	40				15							90
A3200067	BIRCH CREE :							35	40				15							90
T3200067	BIRCH CREE :							35	40				15							90
3200068	BIRCH CREE :							35	40				15							90
A3200068	BIRCH CREE :							35	40				15							90
3200069	BIRCH CREE :							35	40				15							90
A3200069	BIRCH CREE :							35	40				15							90
3200088	PASS CREEK :																1	1		
3200089	BIRCH CREE :							35	40				15							90
A3200089	BIRCH CREE :							35	35				15							85
3200090	BIRCH CREE :							35	40				15							90
A3200090	BIRCH CREE :							35	40				15							90
T3200090A	BIRCH CREE :							35	40				15							90
T3200090B	BIRCH CREE :							35	40				15							90
3200091	PASS CREEK :							35	40				15							90
A3200091A	BIRCH CREE :							35	40				15							90
3200092	BIRCH CREE :							35	40				15							90
A3200092B	BIRCH CREE :							35	40				15							90
3200093	BIRCH CREE :							35	40				15							90
A3200093	BIRCH CREE :							35	40				15							90
--86 MAP--	C33Q-V 35 :							22	19				08							49

3200067	T10N R29E S14	BIRCH CREEK					
	:	35	20 :	:	:	:	55
3200061C	BIRCH CREE :	35	20 :	:	:	:	55
A3200061C	BIRCH CREE :	35	20 :	:	:	:	55
A3200067	BIRCH CREE :	35	20 :	:	:	:	55
T3200067	BIRCH CREE :	35	20 :	:	:	:	55
3200068	BIRCH CREE :	35	20 :	:	:	:	55
A3200068	BIRCH CREE :	35	20 :	:	:	:	55
3200069	BIRCH CREE :	35	20 :	:	:	:	55
A3200069	BIRCH CREE :	35	20 :	:	:	:	55
3200088	PASS CREEK :		1 :	:	:	1	
3200089	BIRCH CREE :	35	20 :	:	:	:	55
A3200089	BIRCH CREE :	35	20 :	:	:	:	55
3200090	BIRCH CREE :	35	20 :	:	:	:	55
A3200090	BIRCH CREE :	35	20 :	:	:	:	55
T3200090A	BIRCH CREE :	35	20 :	:	:	:	55
T3200090B	BIRCH CREE :	35	20 :	:	:	:	55
3200091	PASS CREEK :	35	20 :	:	:	:	55

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '*' ARE ADJUDICATION CLAIMS)
(QUARTER-QUARTERS WITH A '?' HAVE DIFFERENT ACREAGE AMOUNTS--CHECK THE DATA BASE RECORDS)

		NE				NW				SW				SE				
		NE		NW		SW		SE		NE		NW		SW		SE		
WR-NUMBER	SOURCE	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM
A3200091A	BIRCH CREE :	35				20	:			:				:				55
3200092	BIRCH CREE :	35				20	:			:				:				55
A3200092B	BIRCH CREE :	35				20	:			:				:				55
3200093	BIRCH CREE :	35				20	:			:				:				55
A3200093	BIRCH CREE :	35				20	:			:				:				55
A3210044	UNNAMED SP :			05			:			:				:				5
--86 MAP--	C33Q-V 35 :	39	34	07	40	:	01			:				:	09			130

3200067	T10N R29E S24	BIRCH CREEK	:	:	:	:											25	:	25	
3200061C	BIRCH CREE	:	:	:	:	:											25	:	25	
A3200061C	BIRCH CREE	:	:	:	:	:											25	:	25	
A3200067	BIRCH CREE	:	:	:	:	:											25	:	25	
T3200067	BIRCH CREE	:	:	:	:	:											25	:	25	
3200068	BIRCH CREE	:	:	:	:	:											25	:	25	
A3200068	BIRCH CREE	:	:	:	:	:											25	:	25	
3200069	BIRCH CREE	:	:	:	:	:											25	:	25	
A3200069	BIRCH CREE	:	:	:	:	:											25	:	25	
3200088	PASS CREEK	:	I	:	:	:												:		
3200089	BIRCH CREE	:	:	:	:	:											25	:	25	
A3200089	BIRCH CREE	:	:	:	:	:									05		20	:	25	
3200090	BIRCH CREE	:	:	:	:	:											25	:	25	
A3200090	BIRCH CREE	:	:	:	:	:											25	:	25	
T3200090A	BIRCH CREE	:	:	:	:	:											25	:	25	
T3200090B	BIRCH CREE	:	:	:	:	:											25	:	25	
3200091	PASS CREEK	:	:	:	:	:											25	:	25	
A3200091A	BIRCH CREE	:	:	:	:	:											25	:	25	
3200092	BIRCH CREE	:	:	:	:	:											25	:	25	
A3200092B	BIRCH CREE	:	:	:	:	:											25	:	25	
3200093	BIRCH CREE	:	:	:	:	:											25	:	25	
A3200093	BIRCH CREE	:	:	:	:	:											25	:	25	
A3210014	BIRCH CREE	:		02	:	:												:	2	
R3210014	BIRCH CREE	:		0	:	:												:		
A3210063	BIRCH CREE	:	01	:	:	:												:	1	
--86 MAP--	C33Q-V 35	:	16	:	24	:									32	04	13	38	:	127

3200067	T10N R29E S25 BIRCH CREEK						:			:				:				10
3200061C	BIRCH CREE :	10					:			:				:				10
A3200061C	BIRCH CREE :	10					:			:				:				10
A3200067	BIRCH CREE :	10					:			:				:				10
T3200067	BIRCH CREE :	10					:			:				:				10
3200068	BIRCH CREE :	10					:			:				:				10
A3200068	BIRCH CREE :	10					:			:				:				10
3200069	BIRCH CREE :	10					:			:				:				10

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '**' ARE ADJUDICATION CLAIMS)
(QUARTER-QUARTERS WITH A '?' HAVE DIFFERENT ACREAGE AMOUNTS--CHECK THE DATA BASE RECORDS)

WR-NUMBER	SOURCE	NE								NW								SW								SE								SUM
		NE		NW		SW		SE		NE		NW		SW		SE		NE		NW		SW		SE										
		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac									
A3200069	BIRCH CREE :	10																								: 10								
3200089	BIRCH CREE :	10																								: 10								
A3200089	BIRCH CREE :	10																								: 10								
3200090	BIRCH CREE :	10																								: 10								
A3200090	BIRCH CREE :	10																								: 10								
T3200090A	BIRCH CREE :	10																								: 10								
T3200090B	BIRCH CREE :	10																								: 10								
3200091	PASS CREEK :	10																								: 10								
A3200091A	BIRCH CREE :	10																								: 10								
3200092	BIRCH CREE :	10																								: 10								
A3200092B	BIRCH CREE :	10																								: 10								
3200093	BIRCH CREE :	10																								: 10								
A3200093	BIRCH CREE :	10																								: 10								
--86 MAP--	C33Q-V 35 :	28	01																							: 29								

3200067	T10N R30E S19 BIRCH CREEK																	
	:							30				10	15	35			20	: 110
3200061C	BIRCH CREE :							30				10	15	35			20	: 110
A3200061C	BIRCH CREE :							30				10	15	35			20	: 110
A3200067	BIRCH CREE :							30				10	15	35			20	: 110
T3200067	BIRCH CREE :							30				10	15	35			20	: 110
3200068	BIRCH CREE :							30				10	15	35			20	: 110
A3200068	BIRCH CREE :							30				10	15	35			20	: 110
3200069	BIRCH CREE :							30				10	15	35			20	: 110
A3200069	BIRCH CREE :							30				10	15	35			20	: 110
3200089	BIRCH CREE :							30				10	15	35			20	: 110
A3200089	BIRCH CREE :							30				10	15	35			20	: 110
3200090	BIRCH CREE :							30				10	15	35			20	: 110
A3200090	BIRCH CREE :							30				10	15	35			20	: 110
T3200090A	BIRCH CREE :							30				10	15	35			20	: 110
T3200090B	BIRCH CREE :							30				10	15	35			20	: 110
3200091	PASS CREEK :							30				10	15	35			20	: 110
A3200091A	BIRCH CREE :							30				10	15	35			20	: 110
3200092	BIRCH CREE :							30				10	15	35			20	: 110
A3200092B	BIRCH CREE :							30				10	15	35			20	: 110
3200093	BIRCH CREE :							30				10	15	35			20	: 110
A3200093	BIRCH CREE :							30				10	15	35			20	: 110
A3210041	UNNAMED SP :													35			20	: 55
--86 MAP--	C33Q-V 35 :										08			35			05	: 48
NO QTRS	MAPPING	Lot01-01 Lot02-10 Lot03-29 Lot04-28																

3200067	T10N R30E S29 BIRCH CREEK																	
	:													20				: 20
3200061C	BIRCH CREE :													20				: 20
A3200061C	BIRCH CREE :													20				: 20

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '*' ARE ADJUDICATION CLAIMS)
(QUARTER-QUARTERS WITH A '?' HAVE DIFFERENT ACREAGE AMOUNTS--CHECK THE DATA BASE RECORDS)

WR-NUMBER	SOURCE	NE								NW								SW								SE								SUM																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																						
		NE		NW		SW		SE		NE		NW		SW		SE		NE		NW		SW		SE																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															
A3200067	BIRCH CREE :																									20																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																														

3200067	T10N R30E S30 BIRCH CREEK																	
	:	10	20	30	20	:	20	35		35	:							: 170
3200061C	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
A3200061C	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
A3200067	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
T3200067	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
3200068	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
A3200068	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
3200069	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
A3200069	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
A3200088	PASS CREEK :			20	20	:					:				33	02		01 : 76
3200089	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
A3200089	BIRCH CREE :	08	28	02	02	:	12	35	05	10	:							: 102
3200090	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
A3200090	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
T3200090A	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
T3200090B	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
3200091	PASS CREEK :	10	20	30	20	:	20	35		35	:							: 170
A3200091	PASS CREEK :			20	20	:					:				33	02		01 : 76
A3200091A	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
3200092	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170
A3200092B	BIRCH CREE :	10	20	30	20	:	20	35		35	:							: 170

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '*' ARE ADJUDICATION CLAIMS)
(QUARTER-QUARTERS WITH A '?' HAVE DIFFERENT ACREAGE AMOUNTS--CHECK THE DATA BASE RECORDS)

WR-NUMBER	SOURCE	NE								NW								SW								SE								SUM			
		NE		NW		SW		SE		NE		NW		SW		SE		NE		NW		SW		SE		NE		NW		SW		SE					
		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac				
3200093	BIRCH CREE :	10		20		30		20	:	20		35		35	:																		170				
A3200093	BIRCH CREE :	10		20		30		20	:	20		35		35	:																	170					
A3210041	UNNAMED SP :	08		28		02		02	:	04					:																	44					
A3210124	PASS CREEK :					20		20	:						:						33		02					01				76					
A3210315	PASS CREEK :					20		20	:						:						33		02					01				76					
--86 MAP--	C33Q-V 35 :			26		38		02	:	39				15	:	01					25		20					30				196					
NO QTRS	MAPPING	Lot01-38								Lot02-13																											
3200067	T10N R30E S32 BIRCH CREEK																																				
	:			05		15		:		35		20		40	:	35				:			40		40				:			230					
3200061C	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
A3200061C	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
A3200067	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
T3200067	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
3200068	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
A3200068	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
3200069	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
A3200069	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
3200089	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
A3200089	BIRCH CREE :			05		25		:		35		15		35	:	20				:		02	38		38		20		:			233					
3200090	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
A3200090	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
T3200090A	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
T3200090B	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
3200091	PASS CREEK :			05		15		:		35		20		40	:	35				:			40		40				:			230					
A3200091A	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
3200092	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
A3200092A	BIRCH CREE :							:				08			:					:								:				8					
A3200092B	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
3200093	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
A3200093	BIRCH CREE :			05		15		:		35		20		40	:	35				:			40		40				:			230					
A3210041	UNNAMED SP :			05		25		:		35		15		35	:	20				:		02	38		38		20		:			233					
--86 MAP--	C33Q-V 35 :					05		:		21		37		30	:	38		35		18		04		20				:		15	32	03	258				

SD-0611-2 Basin: 32 Starting Water Right: 00067

S	O	S
E	W	Y
L	N	S
Water	Priority	Use
Right No.	Date	Desc
Name	STG/	Source
Last, First	STS	
32-00067	SIMMONS, WILLIAM T.	C 09/10/1882 D/ BIRCH CREEK IRR WR
A32-00067	SIMMONS, WILLIAM T	C 09/10/1882 D/ BIRCH CREEK IRR AJ
	SIMMONS, THEOLA	C STOCK

(GOLD6=Print Profile Rpt For All Rights/Claims on Screen)
(Enter=Continue) (GOLD7=This Query) (GOLD8=Cancel) (Menu _____)

SD-0611-2 Basin: 32 Starting Water Right: 00090

S E L	Water Right No.	Name Last, First	O W N	Priority Date	STG/ STS	Source	Use Desc	S Y S
-	32-00090	SIMMONS, WILLIAM T.	C	05/10/1886	D/	BIRCH CREEK	IRR	WR
-	A32-00090	SIMMONS, WILLIAM T SIMMONS, THEOLA	C C	05/10/1886	D/	BIRCH CREEK	IRR STOCK	AJ

(GOLD6=Print Profile Rpt For All Rights/Claims on Screen)
(Enter=Continue) (GOLD7=This Query) (GOLD8=Cancel) (Menu _____)

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.

MICROFILMED

APR 27 1996

MEMO

FROM: H.W. JONES

TO: TRANSFER 3827

DATE: FEBRUARY 8, 1996

The letter (enclosed) of Jan. 3, 1996, also has a request by protestants, LaVar Newman and D & D Ranches asking that the transfer (misquoted of 4166) 3827 be processed.

In addition transfer 2165 indicated a 960 acre place of use. These two rights (transfer 3827) are going to 339 acres else where leaving 621 acres behind. The applicants plan to transfer all of the remaining right off the 621 acres to another P.O.U. I would like the "A" portion of 32-00090 to just read 621 acres used on a 920 acre permissible place of use.

The applicant true intent is to get the 339 acres of right from transfer 4352 and add it to their remaining rights on the 621 acres and move the resulting 920 acre downstream, through applicants power plant then to a new piece of agriculture ground.

Also original right 32-00067 does not list stockwater as a component but new owner (Mac and Betty Wagoner) need this for their stock. Since this is not an additive quantity and the only user who would protest is the applicant (Birch Creek Ranches) I see no reason to deny the use.

MICROFILMED

MAY 27 1998

MEMO

FROM: H.W. JONES

TO: TRANSFER 3827

DATE: FEBRUARY 1, 1996

This transfer 3827, was part of a package deal. Transfer 4166, now evolved to transfer 4352, was filed also as a recognition of a swap of water rights. Birch Creek Ranches (Ted Sorenson) filed transfer 3827 to move his rights to the Mac Wagoner Ranch. Mac and Betty Wagoner filed transfer 4166 (now 4352) to move rights from their ground to a place of Mr. Sorenson's choosing.

Mac and Betty want transfer 3827 approved since they have a quit claim deed from Mr. Sorenson for his rights. We have held off because the place of use Mr. Sorenson was going to use under transfer 4352 fell through. The Wagoners can't get the watermaster to deliver their new rights without an approved transfer.

Mr. Sorenson has not come up with a new place of use for his new rights so the data base shows these rights, 32-00102 etc, still on Mac and Betty's property. I would like to have transfer 3827 approved with a notation that Mr. Sorenson's rights are no longer being used on Wagoner's property and Mr. Sorenson has five years to find a place of use for his new rights or face possible forfeiture of use.

MICROFILMED

MAY 2 1996

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: Kent C Wilson

1. Right number 32-0067 / 32-0090 Applicant Birch Creek Ranches, Inc.
2. Type of right: ☒ Decree ☐ License ☐ Claim
3. Purpose of transfer: ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Other _____
4. Check:
 - a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use
 - b. ☒ Description of original point of diversion.
 - c. ☒ Description of original place of use.
5. Amount of land &/or water transferred:
 - a. ☒ All of right.
 - b. ☐ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).
 - c. ☒ Check description of point(s) of diversion.
 - d. ☒ Check description of place of use.
 - e. ☒ Check map (shows p.d. and p.u. after transfer).
 - f. ☒ Check for correct signature, notarization, and fee.
 - g. ☒ Check proof of ownership of right &/or land from which water is transferred. Need ownership for:
Sec 19, 29, 30, 32, T 10N, R 30E.
 - h. ☒ Check for expansion in use of right. Comments 32-0090 (1.6 cfs for 960 ac) split
0.8 cfs for 339 ac + 0.8 cfs for 960 ac
 - i. ☒ Check for existing water rights from same source, on land water is being transferred to.
Right number(s) See Birch Creek Ranches Transfer
 - j. ☒ Is use within a Watermaster District? ☒ Yes ☐ No
If yes, what district? 32D

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on _____ Received on _____
2. Is transfer published correctly? ☐ Yes ☐ No DOP 5-6-91
3. Protest received? ☐ Yes ☐ No

RECOMMENDED ACTION

1. ☒ Approve
2. ☐ Deny
3. Conditions* Control of the watermaster wd 32

4. By RDC Date 3/20/96

FEB 20 1996

January 3, 1996 Department of Water Resources

Eastern District Office

RECEIVED

JAN 16 1996

Department of Water Resources

Mr. Norm Young
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

RE: Wagoner-Sorenson Water Right Transfer No. 4166

Dear Mr. Young:

The above mentioned transfer was applied for in February of 1991. This application is now closely approaching five years. The failure to process this transfer application has us totally frustrated and frankly very disgusted. In addition it has been very expensive to a point of financial hardship with all maneuvering stalling and postoring of this transfer by the parties involved.

After a hearing in Idaho Falls at which time the downstream waterusers agreed to withdraw their protests, a letter and an order was sent to all parties from Gary Spackman which stated that Wagoner could petition the Department to bifurcate the hearing for application of transfer No. 4166 which you will find in the last paragraph of Mr. Spackmans order. (Dated 7/15/93) This order and letter is attached.

On October 12th 1993 LaVar Newman filed a stipulation for bifurcation and a withdrawal of objection to the Wagoner Water Right Transfer which is also attached.

D and D Ranches filed a stipulation and withdrawal of objection which was filed by Breck Barton on November 23, 1993. Both of these stipulations and withdrawals, requested exchange of water right numbers and exchange of water rights and endorsed moving forth with these exchanges without objection on their parts.

Since that time we have been kept pretty much in the dark until your letter to Kent Foster dated September 29, 1995. The content of this letter only further frustates us as some more delays in processing our application which has nothing to do with Mr. Sorensons possible future transfers.

You need to understand that I exchanged these priority dates with Mr. Sorenson only to solve conflicts with Mr. Sorenson and so I would not have need to worry about my water right being jeopardized, injured, or cut-off, by stream lining projects, down stream transfers

MICROFILMED

or other proposals. My water right has never been shut-off but I felt with the movement of water down stream without losses as was proposed, and the lack of return flows to the stream from the upstream irrigation could severely injure my Water Right. We also know the negative affects on stream bed losses from the lining project at 8 Mile Canyon Road to the Hydro Pond. So to assure that my rights are not effected I must have this water Priority exchanged and for my sanity and well being I must have this done immediately and request that you do so with haste.

You will find attached a copy of the Quit Claim Deeds to water rights from Birch Creek Ranches Inc., Water Right No. 32-0067 for 3.20 c.f.s. Dated Sept. 10, 1882 and Water Right No. 32-0090 in part for .80 c.f.s. Dated June 10, 1886. These water rights now belong to us (Wagoners) by deed and give further reason to hasten this exchange.

Mr. Sorenson also received a Quit Claim Deed to Water Right No. 32-0102 in the amount of 4.0 c.f.s. Dated May 10, 1889 as an exchange with us (Wagoners) dated Sept. of 1994. These rights have been put on hold by the Department of Water Resources. The exchange of these water rights will have no effect on any ones water rights nor in anyway can injure any downstream right as this water right has always been good so the only change will be by an earlier priority. He purchased water right numbers

32-0073	.2cfs	5/15/1909	Birch Creek
32-0085	.2cfs	5/10/1910	Birch Creek
32-0077	.2cfs	5/15/1910	Birch Creek
32-0086	.2cfs	5/01/1911	Birch Creek
32-0078	.2cfs	5/15/1911	Birch Creek
32-0087	.2cfs	5/01/1912	Birch Creek
32-0079	.8cfs	5/15/1913	Birch Creek

for the amount of 2 c.f.s. from us (Wagoners).

Hoping you can understand that our water rights are so important to our operation that the above must come to be very soon.

We thank you for you're immediate attention to the above.

You will find attached a stipulation and agreement from the Downstream Waterusers of Birch Creek concerning to the need to get this Exchange accomplished.

Sincerely,


Mac Wagoner

MICROFILMED

APR 11 1995

cc: Ron Carlson

January 3, 1996

RECEIVED

Mr. Norm Young
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

JAN 10 1996

Department

Eastern District

3827

RE: Wagoner-Sorenson Water Right Transfer No. ~~4166~~

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MICROFILMED

JAN 21 1996

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32-0087	.2cfs	5/01/1912	Birch Creek
32-0079	.8cfs	5/15/1913	Birch Creek

for the amount of 2 c.f.s. from us (Wagoners).

Hoping you can understand that our water rights are so important to our operation that the above must come to be very soon.

We thank you for you're immediate attention to the above.

You will find attached a stipulation and agreement from the Downstream Waterusers of Birch Creek concerning to the need to get this Exchange accomplished.

Sincerely,


Mac Wagoner

cc: Ron Carlson

MICROFILMED

MAY 27 1999

January 3, 1996

To: Mr. Norm Young
Idaho Dept. of Water Resources

We the undersigned do hereby request the Idaho Dept. of Water Resources to proceed quickly by processing Transfer No. ~~4186~~ ²⁸²⁷ of the waters of * Birch Creek as we requested in our Stipulation For Bifurcation and Withdrawal of Objections Dated in October and November of 1993.

We seriously feel that these transfer applications have been withheld for several years to long now.

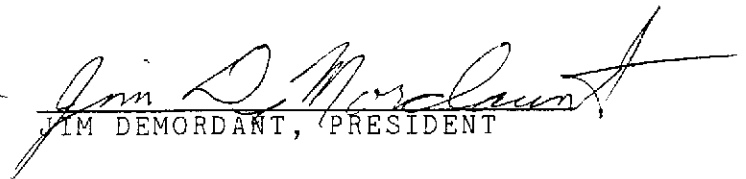
We also feel that some of the problems of Birch Creek need solving and by processing this Wagoner Transfer that it will free him from being a party to future transfers less complicated. We also feel that due to the nature of this priority date exchange that there would not be an injury to the Downstream Users on Birch Creek. Because of no change in the physical diversion of water, a bed loss should not be assessed simply by a Priority Date Change.

We thereby stipulate and agree that for the above reasons this transfer should be quickly approved and treated only as an exchange of priority dates and should not be subject to loss because none will occur.

NEWMAN FARMS

D & D RANCHES


LAVAR NEWMAN, PRESIDENT


JIM DEMORDANT, PRESIDENT

DATED 4 Jan 1996

DATED Jan. 9, 1996

cc: Ron Carlson

* Protestants contacted about transfer # change
MICROFILMED
Huf 2-8-96
JAN 11 1996



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

RECEIVED

NOV 24 1995

Department of Water Resources

September 29, 1995

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

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

Re: Birch Creek Ranches
 (Application for Transfer of Nos. 31-00067/90 and
 Applications for Amendment of Permit Nos. 32-07128/07136)

Dear Kent:

Your letter of July 5, 1995, asks for my thoughts on the status and processing procedure on several applications seeking to change the use of water rights held by Birch Creek Ranches and Ted Sorenson d/b/a Sorenson Engineering. Subsequent to your letter, Mr. Sorenson discussed with me his intentions with regard to the processing of the applications. The purpose of this letter is to document my understanding that Mr. Sorenson will be filing revised applications to change the point of diversion and place of use of irrigation rights he holds from Birch Creek with pending applications either being amended or withdrawn. In addition, he has asked that IDWR continue to hold the application to amend the hydropower rights relative to the required bypass flow to allow the applications to be considered in a single hearing.

Delaying the processing of the pending applications is acceptable, however, relinquishment of any applications that are no longer relevant is desirable. IDWR will continue to withhold processing of the application of amendment of the hydropower right for up to six months, but it is necessary that this matter be addressed. Licensing of the hydropower permits should follow action on the pending amendment.

Sincerely,

Norman C. Young

NORMAN C. YOUNG
Administrator

c: Ted Sorenson
 Breck Barton
 Alva Harris

George Peterson
 Mac & Betty Wagoner
 Don Shenton

Blair Grover

MICROFILMED

SEP 27 1995

*Ma Young -
 My client sold her
 interests & believe
 to Mr. Sorenson. There
 is no need to include
 me any longer.*

AT Young

Birch Creek Ranches, Inc.

5203 South 11th East
Idaho Falls, Idaho 83404
Tel 208-522-8069
fax 208-522-8223

RECEIVED

OCT 23 1995

Department of Water Resources

10/18/95

4:26 PM

Mr. Harold W. Jones
Water Right Supervisor
Idaho Department of Water Resources
900 N. Skyline
Idaho Falls, ID 83402

*Vault —
put in Sorenson
Transfer files
in protest drawer.
mj*

RE: BIRCH CREEK RANCHES PROPOSED STATE LAND TRADE

Dear Harold:

This letter is written pursuant to your phone call of September 17, 1995. You indicated that you had received a call to see if the Idaho Department of Water Resources opposes a land exchange proposed by myself with the State Land Board. You asked me why you had received such a call. Here is the reason.

Enclosed please find a letter dated October 2, 1995 from the Clark County Commissioners to the State Land Board attempting to link a land exchange with water rights. Please note that the lands involved are as follows:

Proposed ground to be traded to the state: Lots 1, 2, 7, 8, 9 and 10 of Section 1, Township 3 South, Range 40 East, Boise Meridian, Bingham County, Idaho.

Lot 5, N $\frac{1}{2}$ of Lot 6, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 3 South, Range 41 East, Boise, Meridian, Bingham County, Idaho.

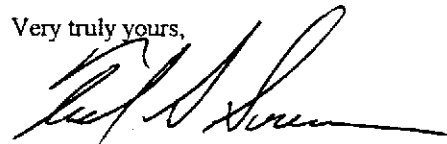
Total: 336 acres

Proposed ground to be acquired by Birch Creek Ranches from the state: E $\frac{1}{2}$ of Section 36, Township 9 North, Range 32 East, Boise Meridian.

Total: 320 acres

None of these pieces of property have any Birch Creek water rights (or any water rights, to my knowledge) associated with them. Please find a copy of Birch Creek Ranches' response dated October 4, 1995 and the Idaho Department of Lands' response dated October 13, 1995. It is my understanding from you that you are not in opposition to this trades. If there is anything any different, please let me know.

Very truly yours,



Ted S. Sorenson
Birch Creek Ranches

TSS:mjm

enclosures

cc: Norm Young, IDWR-Boise, w/encl.

MICROFILMED

OCT 27 1995

CHARLES R. VADNAIS STEVEN R. GILGER CHARLES E. WILSON
CHAIRMAN

CLARK COUNTY IDAHO BOARD OF COUNTY COMMISSIONERS

P.O. BOX 205
DUBOIS, IDAHO 83423
[208] 374-5304

Merlin Sharp
State Lands
Idaho Falls, ID

Post #	Date	# of pages
Fax Note		2
To	Jed Sorenson	
Fax	522-8223	
From	Merlin Sharp	
Phone		

Dear Mr. Sharp,

The Clark County Commissioners oppose any land trade with Birch Creek Ranchers until the following criteria is fully met:

- (1) There is a complete & final settlement with Mac & Betty Wagoner on transfer of priority dates of water rights.
- (2) There is a complete & final settlement with Wagoners, Newmans & Double D Ranch on bld losses for any transferred water, and any water to be transferred in the future.
- (3) We want Birch Creek Ranches to provide a list of all waters that he intends to transfer, listing c.f. amounts, sources, and priority dates.
- (4) We would also like to see the agreement on the trade for original spill amounts to mitigate loss of old channel riparian losses.
- (5) There will be no net loss of tax base to Clark County on irrigated Ag ground or on Ag ground that would result from the trades.
- (6) We would like a definitive answer from Fish & Game as to why this ground was always considered critical to Sage Grouse, yet they now agree to a trade. We understand that the ground being traded to Birch Creek Ranch has verified lecht sites, and that the ground where the conservation easement would be placed (Sec. 16, T9N, R 33E) has no verified lecht sites
- (7) On the trade, there should be no special depredation privileges granted by Fish & Game to Birch Creek Ranches as there is a standard depredation program in place.

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MAY 27 1995

- (8) The Clark County Commissioners would have the right to review the appraisals of said trades and meet with the appraisers.

Sincerely,

Charles Vadnais 10-2-95

Charles Vadnais, Chairman

Charles E. Wilson Oct. 2, 1995

Charles Wilson

Steve Gilger Oct 2, 1995

Steve Gilger

cc: Senator, Dirk Kempthorne
Senator, Larry Craig
Congressman, Mike Crapo
Governor, Phil Batt
Lt. Governor, Butch Otter
Secretary of State, Pete Cenarrusa
Attorney General, Al Lance
Supt. of Public Instr., Ann Fox
Rep. Jo Ann Wood
Senator Rex Furniss
Rep. Lenore Barrett
Rep. Golden Linford

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MAY 27 1995

Birch Creek Ranches, Inc.

5203 South 11th East
Idaho Falls, Idaho 83404
Tel 208-522-8069
fax 208-522-8223

10/4/95

6:39 PM

Charles R. Vadnais
Steven R. Gilger
Charles E. Wilson
Clark County Idaho
Board of County Commissioners
P.O. Box 205
Dubois, ID 83423

RE: BIRCH CREEK RANCHES LAND TRADES

Gentlemen:

This letter is written concerning your recent letters to Mr. LeRoy Cook of the Bureau of Land Management and Mr. Merlin Sharp of the State Board of Lands.

Items 1) thru 4). The criteria you list, one through four, have to do with water rights appurtenant to my land on Birch Creek and not on any of the proposed exchange land.

Attached is a copy of the complete and final settlement with Mac and Betty Wagoner on the transfer of priority dates of water rights on Birch Creek. This agreement has been met on our part and Mac and Betty Wagoner have been paid \$15,000.

At Commissioner Wilson's request, I came to a meeting early last spring concerning private property rights being abused by the government. These water rights you are talking about, I consider to be private property independent of the land exchange. For me to resolve these issues, as you suggest, would result in giving up my property rights. Even if I were willing to give up my property rights, I could not do it because all of these water right issues must ultimately be resolved by the Idaho Department of Water Resources. I do not control Water Resources.

I consider your request to be an attempt to force me into giving up my existing property rights. Respectfully, this is something my conscience will not allow me to do.

Item 5. These proposed trades, if approved, will insure that the tax base in Clark County stays higher than before. I now pay approximately \$28,000 per year in property taxes to Clark County. Before and after all of my activities have and would result in increased property taxes to Clark County.

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OCT 7 1995

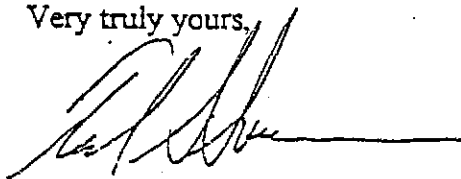
Item 6. The Department of Fish & Game supports these trades only for one reason. It is to the benefit of wildlife and to the sportsmen of Idaho. I faxed Commissioner Wilson copies of their support and, also, copies of the support of Trout Unlimited. Increased public access to Birch Creek will increase the recreational value to the public and economic well being to two businesses in the valley, Lone Pine Cafe and the Birch Creek Inn.

Item 7. The depredation agreement was previously faxed to Commissioner Wilson. This depredation agreement is much more restrictive than any of the depredation policy of Idaho Department of Fish & Game.

Item 8. The release of the appraisal information is under the jurisdiction of the Idaho Department of Lands.

I hope that my property rights, even though I don't vote or live in Clark County, will be valued as high as the next man.

Very truly yours,



Ted S. Sorenson
Birch Creek Ranches

TSS:mjm

cc w/enclosures:

Senator Dirk Kempthorne
Senator Larry Craig
Congressman Mike Crapo
Governor Phil Batt
Lieutenant Governor Butch Otter
Secretary of State Pete Cenerrusa
Attorney General Alan Lance
Superintendent of Public Instruction Anne Fox
Representative Joanne Wood
Senator Rex Furness
Representative Lenore Barrett
Representative Golden Linford
BLM, Idaho Falls
Department of Lands, Idaho Falls
Idaho Department of Fish & Game
Birch Creek Inn
Lone Pine Cafe

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MAY 27 1988

IDAHO DEPARTMENT OF LANDS

EASTERN IDAHO AREA
3563 Ririe Hwy., Idaho Falls, Idaho
Phone (208) 523-5398 Fax (208) 5
Text Phone (800) 377-3525

STANLEY F. HAMILTON - DIRECTOR

October 13, 1995

CLARK COUNTY COMMISSIONERS
P.O. BOX 205
DUBOIS, ID 83423

Subject: Birch Creek Ranches, Inc./State of Idaho Land Exchange

Dear Commissioners:

This is a response to your letter of opposition received by Merlin Sharp of our Idaho Falls office concerning a proposed land exchange between Birch Creek Ranches, Inc. and the State of Idaho.

The proposed land exchange will result in the acquisition of 320.28 acres of state land by Birch Creek Ranches, Inc. in Clark County, 21 air miles west of Dubois. This land will then be added to the Clark County tax base. As part of the exchange, Birch Creek Ranches, Inc. will acquire a 300 acre conservation easement for the protection of sagebrush habitat on a nearby section of state land. As further mitigation, Birch Creek Ranches, Inc. also proposes to acquire a conservation easement for the protection of sagebrush on property owned by Ball Sheep Company.

The State of Idaho in this exchange will acquire 336 acres of mountain rangeland lying an estimated eight (8) miles south of Bone in Blingham County.

The state desires to complete this exchange to consolidate its ownership and increase long term endowment revenue significantly.

The first four (4) concerns you discuss in the enclosed letter relate to private water rights. These issues lie outside the realm of this land exchange. They appear to be private matters; therefore, it is inappropriate and unreasonable to expect the Idaho Department of Lands to make final settlement, etc with water users prior to completion of this exchange.

The controversies surrounding Birch Creek water rights should be settled by the proper authorities including the Idaho Department of Water Resources, the individual water users involved, the ditch or canal company or a court of law. If this exchange is completed and Mr. Sorenson or his successors in interest choose to irrigate the state land acquired, they must do so within the legal requirements of State of Idaho water law.

Item 5 - This particular land exchange will result in a 320.28 acre increase in tax base for Clark County. Part of this acreage is expected to be irrigated farmland someday if Mr. Sorenson is successful in transferring private water rights to this property.

MICROFILMED

Post/it
Fax Note
To
Date 10/16/95
of pages 7
Fax 522-8223
From MERLIN
Phone

11
BOARD OF LAND
COMMISSIONERS

PHILIP E. BATT
Governor

PETE T. GENARRUSA
Secretary of State

ALAN G. LANCE
Attorney General

J.D. WILLIAMS
Controller

ANNE C. FOX
Sup't of Public
Instruction

CLARK COUNTY COMMISSIONERS

October 13, 1995

Page 2

Item 6 - The Idaho Department of Fish and Game now believes that acquisition of a sagebrush habitat conservation easement, as a part of this land exchange will alleviate their earlier concerns. As apparent in the enclosed letter, they will now support this land exchange proposal. It is my understanding the Idaho Fish and Game Department will meet with you to discuss this concern.

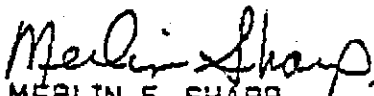
The Upper Snake River Cutthroats Chapter of Trout Unlimited has also expressed support regarding this exchange, contingent upon Mr. Sorenson granting a conservation easement on his remaining private land in the Birch Creek area (see enclosure). That easement will protect valuable riparian habitat along Birch Creek and will provide for public sportsman access to his private land.

Item 7 - It is my understanding that Mr. Sorenson and the Idaho Fish and Game Department have reached agreement on a mutually acceptable wildlife depredation agreement.

Item 8 - Real estate appraisals used in state land exchanges are held confidential by the Department of Lands until such time as the exchange is presented to the State Board of Land Commissioners for final approval. The appraised values, at that time, become public knowledge.

In summary, it appears as though most of your concerns are outside the limits of this specific exchange. They are issues that can be settled by the appropriate authorities. The issues pertaining to this exchange have been discussed and should help to resolve your concerns. We intend to seek final approval to complete this exchange at the November 14, 1995, meeting of the State Board of Land Commissioners. Please feel free to contact me if you have further questions.

Sincerely,


MERLIN F. SHARP
Real Estate Specialist

MFS:PAW:mh

- c: Senator, Dirk Kempthorne
Senator, Larry Craig
- Congressman, Mike Crapo
Senator, Rex Furniss
Rep., Jo An Wood
Rep., Lenore Barrett
Rep., Golden Linford
Rep., Ralph J. Steele
Land Board Members

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MAY 17 1996

SENATOR DIRK KEMPTHORNE
U.S. SENATE
367 DIRKSON SENATE OFFICE BUILDING
WASHINGTON, DC 20510

SENATOR LARRY E. CRAIG
U.S. SENATE
313 HART BUILDING
WASHINGTON, DC 20510

REPRESENTATIVE MIKE CRAPO
437 CANNON BUILDING
WASHINGTON, DC 20515

SENATOR REX FURNACE
3470 E 300 N
RIGBY ID 83442

REP. JO AN E. WOOD
3778 E 500 N
RIGBY ID 83442

REP. LENORE HARDY BARRETT
P O BOX 347
CHALLIS ID 83226

REP. GOLDEN C. LINFORD
2120 W 4200 S
REXBURG ID 83440

RALPH J. STEEL
532 S 52 E
IDAHO FALLS ID 83221

ALAN G. LANCE, ATTORNEY GENERAL
P O BOX 83720
BOISE ID 83720-0010

DR. ANNE FOX, SUPT. OF PUBLIC INSTRUCTION
P O BOX 83720
BOISE ID 83720-0027

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MAY 27 1984

PETE T. CENARRUSA, SECRETARY OF STATE
P O BOX 83720
BOISE ID 83720-0080

J. D. WILLIAMS, STATE CONTROLLER
P O BOX 83720
BOISE ID 83720-0011

GOVERNOR PHILIP E. BATT
P O BOX 83720
BOISE ID 83720-0034

SENATOR DIRK KEMPTHORNE
2539 CHANNING WAY, SUITE 150
IDAHO FALLS ID 83404

SENATOR LARRY E. CRAIG
2539 CHANNING WAY, SUITE 150
IDAHO FALLS ID 83404

REPRESENTATIVE MIKE CRAPO
2539 CHANNING WAY, SUITE 150
IDAHO FALLS ID 83404

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MAY 2 1980



IDAHO FISH & GAME
UPPER SNAKE REGION
1515 Lincoln Road
Idaho Falls, Idaho 83401-2198

Philip E. Batt / Governor
Jerry M. Caney / Director

August 29, 1995

Mr. Lou Benedick
Area Supervisor
Department of Lands
3563 Ririe Highway
Idaho Falls ID 83401

Dear Lou:

The Idaho Department of Fish and Game initially had concerns with the land exchange between Birch Creek Ranches and the Idaho Department of Lands on the segment located within Clark County. Since that time we have been working with Birch Creek Ranches, Inc. expressing our concerns about the loss of sagebrush habitat for both sage grouse and antelope.

Through our negotiations with them we have come to an agreement that if they obtain a conservation easement with the Idaho Department of Lands on segment, Section 16, Township 9 North, Range 33 East, B.M., lying north of Highway 22, we would have no concerns with the land exchange taking place between the Idaho Department of Lands and Birch Creek Ranches, Inc. for NE1/4, N1/2 SE1/4, and Lots 1 and 2 of Section 36, Township 9 North, Range 32 East, B.M.

If you have any further questions, please feel free to contact me.

Sincerely,

Don E. Wright
Regional Supervisor

DEW:ab

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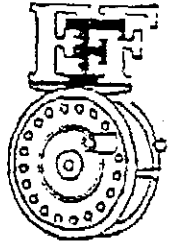
AUG 30 1995

Department of Lands
Idaho Falls, Idaho

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MAY 27 1999

Keeping Idaho's Wildlife Heritage



AFFILIATED WITH TROUT UNLIMITED AND THE FEDERATION OF FLY FISHERS

12 March 1995

SPW Mr. Stanley Hamilton
Director, Idaho Department of Lands
Statehouse Mail
Boise, ID 83720

Dear Mr. Hamilton:

This letter expresses the support of the Upper Snake River Cutthroats Chapter of Trout Unlimited for the exchange of 280 acres of land owned by Mr. Ted Sorenson on Birch Creek for an 820-acre parcel of BLM land, as described in today's edition of the Idaho Falls Post Register. Since Mr. Sorenson has told us that his willingness to trade for the BLM land depends on his ability to trade land that he owns near Bone for a 320-acre parcel of state land near the BLM land in question, we also support the trade involving the state land.

Our reasons for supporting these trades are, first, that the public would acquire access to and protection for about a mile of a high-quality trout stream and its associated riparian zone, and second, that the trade would protect the instream flow of water in several miles of the creek. Mr. Sorenson has water rights that he will lose if he does not use water from Birch Creek to irrigate land. If he does not complete the proposed trades, he will be forced to withdraw water from the creek to irrigate his lands near Lone Pine; if he does complete the trades, this water will remain in the creek all the way down to his existing hydropower diversion, a distance of roughly ten miles.

Our support for these exchanges is contingent on the acquisition of a conservation easement to protect the riparian zone on the remainder of Mr. Sorenson's land on Birch Creek, which he will retain in private ownership. Mr. Sorenson has expressed to us a willingness to grant such an easement. If such an easement would require volunteer labor to help erect fences, we will offer that assistance.

We are aware that the Department of Fish and Game is concerned about the loss of winter range for sage grouse that would result if the land now in state ownership is brought into cultivation. We are also aware of the Department's concern that the proposed changes in land use may create increased risk of depredation claims for damage done by antelope.

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MAY 27 1995

We are sensitive to the Department's concern for the sage grouse. Our organization is a strong advocate for the protection of habitat for all species of wildlife, not just for fish. Since most of us are not professional biologists, we cannot make a valid quantitative comparison of the ecological value of the parcels proposed for trade. However, we are well aware that the ecological value of riparian habitat is generally very much greater than that of uplands; we can also observe that there seems to be a great deal of sagebrush country left in Idaho, while streams and riparian areas are under seige from many kinds of development at the same time that they are being sought by a rapidly-increasing population of fishermen. To us, the advantages of protecting several miles of an easily accessible, high-quality stream and its riparian zone, and of acquiring outright ownership of one mile of it, seem quite clear.

Also, we are satisfied that Mr. Sorenson is willing to make all reasonable allowances for antelope depredation.

Sincerely,

William K. Terry

William K. Terry
Vice President
for Conservation
2170 Rendezvous Rd.
Idaho Falls, Idaho 83402

cc: Mr. LeRoy Cook, Bureau of Land Management
Mr. Don E. Wright, Idaho Department of Fish and Game
Mr. Ted Sorenson

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MAY 2 1964



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

September 29, 1995

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

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

Re: Birch Creek Ranches
(Application for Transfer of Nos. 31-00067/90 and
Applications for Amendment of Permit Nos. 32-07128/07136)

Dear Kent:

Your letter of July 5, 1995, asks for my thoughts on the status and processing procedure on several applications seeking to change the use of water rights held by Birch Creek Ranches and Ted Sorenson d/b/a Sorenson Engineering. Subsequent to your letter, Mr. Sorenson discussed with me his intentions with regard to the processing of the applications. The purpose of this letter is to document my understanding that Mr. Sorenson will be filing revised applications to change the point of diversion and place of use of irrigation rights he holds from Birch Creek with pending applications either being amended or withdrawn. In addition, he has asked that IDWR continue to hold the application to amend the hydropower rights relative to the required bypass flow to allow the applications to be considered in a single hearing.

Delaying the processing of the pending applications is acceptable, however, relinquishment of any applications that are no longer relevant is desirable. IDWR will continue to withhold processing of the application of amendment of the hydropower right for up to six months, but it is necessary that this matter be addressed. Licensing of the hydropower permits should follow action on the pending amendment.

Sincerely,

NORMAN C. YOUNG
Administrator

c: Ted Sorenson
Breck Barton
Alva Harris

George Peterson
Mac & Betty Wagoner
Don Shenton

Blair Grover

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MAY 27 1999

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
GAYLE A. SORENSON, P.A.
DONALD L. HARRIS, P.A.
DALE W. STORER
MARIE T. TYLER
JOHN G. SIMMONS
ROBERT M. FOLLETT
FREDERICK J. HAHN, III

WEST ONE BANK BLDG.
330 SHOUP AVENUE, THIRD FLOOR
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

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JUL 10 1995

Department of Water Resources

July 5, 1995

Mr. Norm Young
IDAHO DEPARTMENT OF
WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Re: Birch Creek Ranches and Ted Sorenson d/b/a Sorenson Engineering Pending Applications

Dear Norm:

We are writing to you about several pending matters of Birch Creek Ranches, Inc. and Ted Sorenson d/b/a Sorenson Engineering, because of some procedural concerns we have and because we are receiving pressure to do something. From our records it appears there are a number of pending applications or amendments. We have referenced each in the list below and have tried to explain some of our concerns.

1. Application for Permit No. 33-7128, for 45cfs of the flow of Birch Creek was originally filed on September 8, 1982, by Birch Power Company. Application for Permit No. 32-7136, for 30cfs of the flow of Birch Creek, was filed by the same entity on January 3, 1984. The two applications were protested and consolidated for hearing. A combined hearing was held April 5, 1984. The final decision on the protests to the two applications is reflected in an "Order Adopting Modified Memorandum Decision and Order" signed by the director, A. Kenneth Dunn, on March 26, 1985, and the "Modified Memorandum Decision and Order" thereby adopted by the director's order, which bears the signature of Bobby Fleenor, and is dated March 27, 1985. That final decision was appealed to the District Court which entered its "Memorandum Decision" in Bonneville County Case No. 33072, affirming the decision of the director, on June 26, 1986. The two permits were assigned by Birch Power Company to Ted S. Sorenson, d/b/a Sorenson Engineering, on August 21, 1986. The use of the water for power generation is, of course, a nonconsumptive use. The matter that became the main issue in the protest hearing, and which was resolved in the Department's

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JUL 7 1995

Mr. Norm Young
Julu 5, 1995
Page 3

resulted in the filing of another application to amend the two permits. Within a short time after construction of the project, it had become apparent that the 11% or 5.0cfs bypass flow did not accomplish the objectives of Idaho Department of Fish & Game and the Bureau of Land Management for riparian habitat. After a study, Mr. Sorenson had made a proposal to substitute a system of plastic pipe and lined ponds. After approval by Idaho Fish & Game and the BLM, the proposal was implemented, and by March of 1990, Mr. Sorenson had received written acceptance of the new system which requires less than .1cfs to provide the amenities, instead of the 5.0cfs bypass flow. When Mr. Sorenson contacted you about this circumstance, you advised him by letter of March 20, 1990, that the Department of Water Resources could not waive the bypass flow condition without processing an application to amend the permits. Pursuant thereto, Ted S. Sorenson, d/b/a Sorenson Engineering, filed an application about April 30, 1990, to amend the two permits by eliminating the 5.0cfs bypass flow requirement. After publication of notice, the application was protested. In November of 1991, Gary Spackman, who had been assigned as hearing officer on the 1991 application for transfer and amended applications for transfer of Wagoners and Birch Creek Ranches, Inc., sent a letter suggesting that the hearing on the protests to the application to amend the permits be held in conjunction with the hearing on the protests to the proposed transfers.

4. In early 1991, after a tentative agreement was entered into by Birch Creek Ranches with Mac and Betty Wagoner, and after Birch Creek Ranches had purchased the George Woodie water right on Birch Creek, Wagoners filed, about January 21, a new application for transfer of eight of their rights, totaling 6.0cfs, from their lands to the D&D lands. Pursuant to the agreement, Birch Creek Ranches then filed two amended applications for transfer, one to transfer 4.0cfs (Right No. 0067 and one-half of Right No. 0090) from the Simmons land to Wagoner land, and another to transfer the balance of nine of the Simmons rights, totaling 14.6cfs, and the Woodie right for 2.9cfs, to the D&D lands. Again there were protests, and before a hearing was held, Birch Creek Ranches and the major protestants, D&D and Newman, agreed to cooperate in a stream lining project to salvage more water. Before completion of the lining project, BLM and Idaho Fish & Game placed certain conditions on placement of the lining material which resulted in a problem with the lining effort. In fact, instead of increased flows in the lined segment, losses increased. The processing of the pending applications was put on hold and numerous attempts were made to work out a plan acceptable to all involved state and federal agencies to rectify the problem. All such attempts have, to date, been unsuccessful. By about 1993, it appeared that the increased losses in the lined reach had diminished approximately to normal. Now, it appears that the lining may, in fact, be reducing losses in that reach. By the Spring of 1994, it appeared we could recommence processing of the applications, but then D&D refused to

MICROFILMED

Aug 21 1995

Mr. Norm Young
July 5, 1995
Page 2

final decision, was the contemplated savings of water which would result from the construction of the power plant. The point of diversion for the old Reno Ditch was to be moved upstream and some 3,000 feet of the natural channel of Birch Creek, as well as some five miles of the upstream portion of the Reno Ditch, were to be dewatered and replaced with a shorter, lined canal and a pipeline to the power plant, which would then discharge water into the Reno Ditch at the downstream location. The department found that the water to be saved by the construction of the project (the elimination of 3,000 feet of Birch Creek Channel and five miles of Reno Ditch) would be 22% of the total flow of Birch Creek at the new diversion, and that such savings belonged to the applicant. Further, the savings was apparently estimated to be, on the average, about 9.0 to 10.0cfs. The department then assigned one-half of the savings, 11% of the flow of Birch Creek or 5.0cfs, whichever is greater, to be allowed to flow past the new diversion works in Birch Creek to mitigate the riparian, fish and wildlife values in the public interest, and to provide stock watering. The second half of the savings, or 11%, was assigned to reduce contemplated seepage losses through the new feeder canal or power channel. Later, also in August of 1986, the permits were amended to change the location of the power plant from the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of S.17, T.8N., R.31E. to the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of S.14, T.8N., R.31E., a distance of an additional three miles. We assume the elimination of the extra three miles of the Reno Ditch has resulted in an even greater savings than 22%. If the elimination of 3,000 feet of Birch Creek channel and five miles of the Reno Ditch results in 22% savings, would the elimination of 3,000 feet of Birch Creek channel and eight miles of Reno Ditch result in something like 33 to 34% savings? Proof of beneficial use was submitted for both permits about February 11, 1989, but no license has yet been issued.

2. On April 19, 1989, Birch Creek Ranches, Inc., filed an application to transfer nine Simmons water rights, totaling 18.6cfs, from the Simmons lands on Birch Creek above Blue Dome to D&D lands below the power plant and the Reno Ranch. A hearing was held on the protests on April 17 and 18, 1990. A draft provisional or interim order for delivery of water rights was prepared shortly after the hearing and circulated for comments. We provided comments, but have never received or been provided with a final version of such order. Before any decision on the merits of the protests was issued, Birch Creek Ranches entered into negotiations with two of the protestants, Mac Wagoner and George Woodie, which resulted in the next round of filings in January and February of 1991.

3. Before the 1991 filings, and during the time period when preparation for and conducting of the April, 1990, hearing occurred, matters regarding the conditions of permits Nos. 32-7182 and 32-7136 relating to the saved water had progressed to a point which

MICROFILMED

92-17-985-107

Mr. Norm Young
July 5, 1995
Page 4

renew its lease of water rights from Birch Creek Ranches, and withdrew its lands as the prospective place of use. Then Wagoners unilaterally filed an amended application to transfer the eight water rights it had sold to Birch Creek Ranches, totaling 6.0cfs, upstream to Simmons lands, rather than downstream to D&D lands. While Birch Creek Ranches has worked out a tentative accommodation agreement with Wagoners, and has been laboring diligently to locate an alternative downstream place of use for the water rights, not enough has yet been completed to be able to redo the applications. We keep receiving requests from the Eastern Region Office of IDWR to withdraw and relinquish the applications.

5. Since completion of the power plant project, records of diversions from Birch Creek into the feeder canal for the power plant, as well as of discharges from the power plant into the Reno Ditch, disclose that since the bypass flows at the new point of diversion were terminated, the amounts diverted are essentially equal to the amounts discharged at the power plant, indicating that transmission losses through the power channel and pipeline are virtually nil. Whether the savings of water resulting from substitution of the lined power channel and pipeline, over historical losses in 3,000 feet of Birch Creek and more than eight miles of the old Reno Ditch, is 22% or as much as 34%, the fact is that virtually every drop of water diverted from Birch Creek at the new point of diversion is discharged into the Reno Ditch at the power plant location. Today, the diversion at the new point of diversion is about 50.0cfs. 50.0cfs is also being discharged from the power plant into the Reno Ditch. At that location, there is between 11.0 and 17.0cfs more water present in the Reno Ditch than there ever would have been absent the power project and the consequent savings. In November of 1993, we completed and presented for filing, an application to transfer the saved water right to D&D lands for irrigation purposes. The department never accepted it for filing. Eventually you and I had one or more discussions about the department's apparent reluctance to deal with the saved water. My understanding of your expressions of departmental concerns is primarily that the uses, to which the saved or salvaged water created by the power project were assigned by the permits, had a strong public interest element. We then suggested that since those particular public interests were being otherwise fully served, we would be willing to utilize the saved or salvaged waters to replace any transmission losses in the portion of Birch Creek from the old points of diversion of the Simmons, Woodie and Wagoner rights, down to the new Reno diversion, which might be attributable to such rights because of the proposed change in point of diversion. We suggested this concept had something of a public interest benefit in it because it would result in keeping higher flows in Birch Creek during the irrigation season (as a result of the transfer downstream from the points of diversion for the Simmons, Woodie and Wagoner rights), which would be a benefit to the public in general, and that there could also be a benefit to every water user in particular

MICROFILMED

NOV 27 1995

Mr. Norm Young
July 5, 1995
Page 5

by insuring that more than enough water is assigned to potential transmission losses. The downstream users, D&D and Newman, would benefit the most because of the augmented flows, some of which would accrue to them and increase the amount of actual water available under their existing rights. We interpreted your response to be positive, so we withdrew the November application and presented another application about May 17, 1994. To our knowledge, it has never been accepted for filing.

Until such time as our client is able to acquire a potential place of use downstream from the power plant, it will accomplish little to try to process most, if not all of the pending applications. As we try to analyze the ramifications of withdrawing any or all applications at this time, our major concern is whether IDWR perceives some negative consequence of doing so. If you would be so kind, we would very much appreciate your thoughts and comments before we take further action.

Very truly yours,



Kent W. Foster

pc. Ted Sorenson
G:\WPDATA\KWF\6936\IDWR0622.LTR:sjw

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MAR 7 1993

Glen WJ
file CR

32-00067-etal

29-Jun-1994

MAC & BETTY WAGONER
PO BOX 296
DUBOIS ID 83423

Dear Mr. & Mrs. Wagoner:

The hearing scheduled for Birch Creek Ranches on water right Transfers No.'s 3553 and 3829 which will be held on July 14, 1994 at 9:00 a.m. at the Idaho Falls office of IDWR has been modified to a pre-hearing conference at the request of the applicant.

The issues to be discussed will include among other items, applications for transfer filed by Birch Creek Ranches and Mac & Betty Wagoner.

Sincerely,

Harold W. Jones
HAROLD W. JONES *cb*
Water Right Supervisor

HWJ/rb

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MAY 27 1999

LAW OFFICES OF
BRECK BARTON & ASSOCIATES, P.A.
305 WEST MAIN
REXBURG, IDAHO 83440

BRECK H. BARTON

P.O. Box 100
(208) 356-4880

June 17, 1994

Ronald D. Carlson
Department of Water Resources
900 North Skyline Dr.
Idaho Falls, ID 83402

RECEIVED
JUN 20 1994

Department of Water Resources
Eastern District Office

RE: Birch Creek Ranch Applications for Transfer

Dear Mr. Carlson:

I've received a copy of the letter from George Peterson directed to you dated May 26, 1994. It is my conclusion that a hearing in the above matter would be fruitless inasmuch as there does not appear to be a place of use for that portion of the application transferring Birch Creek Ranches, Inc. water to lands owned by D&D Ranches, Inc. and/or LaVar Newman. I understand that the lease extant between those parties has not been renewed.

We do believe, however, that there is a valid application for transfer pending between Birch Creek Ranches, Inc. and Mac and Betty Wagoner (Mac's amended application) that could be acted upon.

We look forward to hearing from you on this matter at your earliest convenience.

Very truly yours,



Breck Barton

BB/djf

cc: Kent Foster
George Peterson
Blair Grover
Mac Wagoner and Betty Wagoner

MICROFILMED
JUN 27 1994

HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FALLS OFFICE

FRED J. HAHN
 KENT W. FOSTER
 ROBERT E. FARNAM
 WILLIAM D. FALER
 STEPHEN E. MARTIN
 CHARLES A. HOMER
 GARY L. MEIKLE
 GAYLE A. SORENSON, P.A.
 DONALD L. HARRIS
 MARIE T. TYLER
 JOHN G. SIMMONS, P.A.
 ROBERT M. FOLLETT
 KUMEN L. TAYLOR
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KEY FINANCIAL CENTER
 702 W. IDAHO SUITE 810
 BOISE, IDAHO 83702

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BOISE OFFICE

RANDALL B. REED
 FREDERICK J. HAHN III
 RONALD D. CHRISTIAN

ARTHUR W. HOLDEN
 (1877-1967)
 ROBERT B. HOLDEN
 (1911-1971)
 TERRY L. CRAPO
 (1939-1982)
 WILLIAM S. HOLDEN
 (1907-1988)

November 29, 1993

RECEIVED

DEC 01 1993

Department of Water Resources

FEB 26 1994

Department of Water Resources
 Eastern District Office

Mr. Gary Spackman, Supervisor
 IDAHO DEPARTMENT OF WATER
 RESOURCES
 1301 North Orchard Street
 Statehouse Mail
 Boise, Idaho 83720

Mr. Blair Grover, Esq.
 GROVER & WALKER,
 CHTD.
 P.O. Box 36
 Rigby, Idaho 83442

Mr. George Petersen, Esq.
 PETERSEN, MOSS, OLSEN,
 MEACHAM & CARR
 485 "E" Street
 Idaho Falls, Idaho 83402

Mr. Breck Barton, Esq.
 BARTON & ASSOCIATES
 P.O. Box 100
 Rexburg, Idaho 83440

Dear Gentlemen:

We are writing this letter at the request of Mr. Ted Sorenson, President of Birch Creek Ranches, Inc. and who also does business as Sorenson Engineering, the successor in interest of Birch Power Company, regarding the matters of applications for transfer numbers 3553, and 4166 and the application for amendment of permits numbers 32-07128 and 32-07136. As we understand it, these matters were consolidated for disposition by the Department of Water Resources when we were proceeding toward a final disposition, perhaps by hearing, in 1991, before the matters were derailed by problems experienced with the lining project on Birch Creek.

After a significant amount of reflection and exploration of virtually all alternative options we have been able to think of, Mr. Sorenson has concluded it is time to formally request that the matters be scheduled for hearing or at least for further processing.

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MAY 27 1994

November 29, 1992
Page 2

At this time, the problems experienced with the lining project appear to have essentially stabilized and other feasible alternatives for saving water lost in the channel of Birch Creek do not appear to have much promise in the immediate future.

Birch Creek Ranches, Inc., filed its original application in 1989 seeking a transfer in the place of use of some nine water rights (32-0067, 32-0090, 32-0093, 32-0068, 32-0089, 32-0069, 32-0092, 32-0061C and 32-0091) totaling 18.6 cfs from 960 acres comprising most of the historically irrigated portion of the Simmons Ranch upstream from the Blue Dome Bridge on Birch Creek, to a like number of acres several miles to the south owned by D & D Enterprises, Inc. The application also sought a change in the point of diversion from seven locations on the Simmons Ranch, downstream to the New Reno diversion, or the diversion for the power channel or feeder ditch for the hydropower plant.

A hearing was held on the protests to this application, but before a final decision was made, an agreement between Birch Creek Ranches and Mac and Betty Wagoner resulted in a new application for transfer by Wagoners and amended applications by Birch Creek Ranches, Inc. The Wagoner application seeks the transfer in place of use of eight (8) rights totaling 6.0 cfs (32-00102, 32-0073, 32-0085, 32-0077, 32-0086, 32-0078, 32-0087, and 32-0079) from the Wagoner Ranch to the D & D 960 acres, and in point of diversion from the current Wagoner Ranch diversion, downstream to the New Reno diversion. The amended application of Birch Creek Ranches seeks a change in place of use for 4.0 cfs (right #32-0067 and part of 32-0090) of the earliest priority rights for the Simmons Ranch, a short distance downstream to the Wagoner Ranch, and for the remainder of 32-0090 and eight others (32-0093, 32-0068, 32-0061C, 32-0069, 32-0089, 32-0092, 32-0091 and 32-0101) totaling 17.5 cfs downstream to the D & D 960 acres. The new point of diversion for the 4.0 cfs would be the present Wagoner Ranch diversion and for the 17.5 cfs, the New Reno diversion.

Also, Ted S. Sorenson d/b/a Sorenson Engineering (formerly Birch Power Company) filed, in April of 1990, an application to amend permits numbers 72-7128 and 32-7136 by elimination of certain conditions placed in the permits when they were issued in 1985. The conditions related to a saved or salvaged water right determined by Idaho Department of Water Resources, and

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MAY 21 1993

November 29, 1993
Page 3

confirmed by the district court, to have resulted from the elimination of some 3,000 feet of the lower channel of Birch Creek, and about the upper eight miles of the Old Reno Ditch. The savings was determined to be 22% of the flow of Birch Creek at the New Reno diversion, or approximately 10 cfs when such flows total 45 cfs.

One half of the saved water (11%), up to 5 cfs, was assigned by the conditions in the permits as bypass flows for maintenance of the stockwater supply and riparian habitat. The other half of the saved water appears to have been assigned to anticipated seepage losses in the feeder ditch (power channel) from the New Reno diversion to the power plant.

The bypass flow never accomplished the purpose to which it was assigned, and Sorenson Engineering entered into an arrangement with the Idaho Fish and Game Department and the Bureau of Land Management to provide a system for stock and wildlife water and riparian habitat which requires only about .1 cfs flow to maintain.

In addition, the measurements over the years since the use of the feeder ditch or power channel commenced, show that no measurable seepage loss occurs in the ditch or channel from the New Reno diversion to the power plant. Hence, the application for amendment requests the removal of such conditions from the permits.

Since, in fact, virtually all of the 22% of the salvaged water passes through the power plant unconsumed, Sorenson Engineering has filed another application for transfer, to change the nature of use of the saved water to irrigation, and the place of use to the D & D lands.

Finally, although there seems to be a pending moratorium, Birch Creek Ranches has filed an application for permit to drill two wells, one near Lone Pine and one near Blue Dome, for the purpose of augmenting, from ground water, the flows of Birch Creek to offset additional seepage loss associated with leaving the Simmons' water in Birch Creek during the irrigation season and allowing it to flow downstream to the New Reno diversion.

It may be that all of the pending applications cannot or should not be consolidated and processed simultaneously, but Birch Creek Ranches and Sorenson Engineering would not object

MICROFILMED

MAY 27 1995

November 29, 1993
Page 4

to such consolidation. In fact, there may be a substantial savings by resolving all issues in the same proceedings; the issues seem to be very much inter-related.

At one time, substantial progress had been made toward a settlement agreement among the protestants and applicants. We cannot say whether settlement is possible now; we certainly hope so. But in the mean time, it seems that it would be best to move the process along. Perhaps it would be well to initiate an effort to determine the issues and the procedure and schedule for resolution. We will try to support such an effort.

For example: We recall that at one time there was some question about whether, or to what extent, the transcript of the first hearing should be used. Idaho Department of Water Resources has a tape recording of the proceedings, and a court reporter was present and made a stenographic record as well. We probably ought to decide what can be agreed upon so far as the making and the use of a transcript, and how to share the costs of such a transcript.

In any event, we wish this letter to serve as notice that Birch Creek Ranches and Sorenson Engineering have concluded that there are no presently viable alternatives to proceeding with the resolution of the protests to the pending applications referenced in this letter.

We will look forward to everyone's response.

Yours very truly,



Kent W. Foster

#6936.00/KWF:kep

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MAY 2 / 1993

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED

NOV 29 1993

Department of Water Resources
Eastern District Office

IN THE MATTER OF APPLICATION FOR)	
TRANSFER NO. 3553 (WATER RIGHTS)	
NOS. 32-00067, 32-00090, 32-00093,)	
32-99968, 32-00089, 32-00069,)	STIPULATION FOR
32-00092, 32-00061C, 32-00091) IN)	BIFURCATION OF WATER
THE NAME OF BIRCH CREEK RANCHES,)	RIGHT TRANSFER AND
INC., AND APPLICATION FOR TRANSFER)	WITHDRAWAL OF OBJECTION
NO. 4166 (WATER RIGHTS NOS.)	TO WATER RIGHT TRANSFER
32-00102, 32-00073, 32-00085,)	
32-00077, 32-00086, 32-00078,)	
32-00087, 32-00079) IN THE NAME OF)	
MAC OR BETTY WAGONER,)	
)	

COMES NOW, Lavar Newman, by and through their counsel of record, Blair Grover and represents as follows:

1. There is currently pending before the Department of Water Resources an application for exchange of water rights between Birch Creek Ranches, Inc., and Mac and Betty Wagoner. Mac and Betty Wagoner propose to exchange water right numbers with Birch Creek Ranches, Inc., water right numbers. The effect of the exchange would be to provide Mac and Betty Wagoner with the oldest decreed rights in Birch Creek in the amount of 4 cfs of flow as measured at their point of diversion.

2. The proposed exchange of water rights described in paragraph 1 is part of a currently pending proceeding before the Department of Idaho Water Resources involving additional proposed transfers of water rights by Birch Creek Ranches, Inc.

3. Lavar Newman has intervened and objected to all proposed transfers, including the proposed exchange of water rights between Wagoner and Birch Creek Ranches, Inc.

4. In an effort to expedite the above proceedings, Lavar Newman agrees that the Department of Water Resources bifurcate the above proceedings, dealing first with the exchange of water rights between Wagoners and Birch Creek Ranches, Inc., and second, with the proposed transfer of water rights by Birch Creek Ranches.

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Therefore, Lavar Newman does hereby agree and represent to the Idaho Department of Water Resources as follows:

1. Lavar Newman does not object to the bifurcation of the above proceedings into two parts, with the Idaho Department of Water Resources to first address and determine the proposed exchange of the following water right numbers totaling 6 cfs

#A32-0102	4.00cfs	priority date 5/10/1889
#A32-00073	0.20cfs	priority date 5/15/1909
#A32-00086	0.20cfs	priority date 5/01/1911
#A32-00077	0.20cfs	priority date 5/15/1910
#A32-00085	0.20cfs	priority date 5/10/1910
#A32-00078	0.20cfs	priority date 5/15/1911
#A32-00087	0.20cfs	priority date 5/01/1912
#A32-00079	0.80cfs	priority date 5/15/1913

with water right numbers held by Birch Creek Ranches, Inc., and totaling 4 cfs

#32-0067	3.20cfs	priority date 9/10/1882
Portion of #32-0090	0.80cfs	priority date 5/10/1886

2. Lavar Newman agrees and requests that their objection to the exchange of the water rights described in paragraph 1 above be withdrawn.

3. Lavar Newman specifically reserves any objections to the transfer of any water rights now held or hereafter acquired by Birch Creek Ranches, Inc., whether the same are held by Birch Creek Ranches, Inc., or are acquired from Mac and Betty Wagoner in this proceeding, and/or otherwise acquired.

DATED this 12th day of October, 1993.

LAVAR NEWMAN, PROTESTANT

BY Lavar Newman

Approved By:

Blair Grover

BLAIR GROVER
Counsel for Lavar Newman

MICROFILMED

MAY 27 1994

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
TRANSFER NO. 32-0061C/ETC. AND	)	COMBINED
32-0067/0090 IN THE NAME OF BIRCH	)	NOTICE OF HEARING
CREEK RANCHES AND NO. 32-0102/ETC.	)	
IN THE NAME OF MAC OR BETTY WAGONER	)	
	)	

On February 12, 1991, Birch Creek Ranches, Inc. filed an amended application to transfer water rights identified as Nos. 32-0061C/32-0090/32-0093/32-0068/32-0069/32-0089/32-0092/32-0091/32-0101 for the diversion of 17.5 cubic feet per second. Protests against approval of said transfer were received from Janice M. Judy, and George C. Petersen, Attorney at Law, in behalf of D & D Enterprises.

On February 12, 1991, Birch Creek Ranches, Inc. filed an additional amended application to transfer water rights identified as Nos. 32-0067/32-0090 for the diversion of 4.00 cubic feet per second. Protests against approval of this transfer were received from Blair Grover, Attorney at Law, in behalf of Lavar and Louise J. Newman and from George C. Petersen, Attorney at Law, in behalf of D & D Enterprises.

On February 6, 1991, Mac and Betty Wagoner filed a application to transfer water rights identified as Nos. 32-0073/0077/0078/0079/0085/0086/0087/0102 for the diversion of 6.00 cubic feet per second. Protests against approval of said transfer were received from Blair Grover, Attorney at Law, in behalf of Lavar and Louise J. Newman and from George C. Petersen, Attorney at Law, in behalf of D & D Enterprises.

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Because of the similarities of the issues involved this hearing has been combined.

The Department has set the matter of protests for hearing for 9:30 a.m., Monday, July 8, 1991, in the Civil Defense Conference Room, Bonneville County Courthouse, 605 N. Capital, Idaho Falls, Idaho. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67 of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Date this 19th day of June, 1991.


RONALD D. CARLSON
Eastern Regional Manager

RECEIVED

MAY - 6 1991

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
RE: APPLICATION OF BIRCH CREEK RANCHES, INC.
32-0067

Department of Water Resources
Eastern District Office

TO: Idaho Department of Water Resources
150 Shoup Avenue
Idaho Falls, Idaho 83402

COMES NOW LAVAR NEWMAN and LOUISE J. NEWMAN, hereinafter referred to as PROTESTANTS, and protest the Application and Amended Application for Transfer of Water Rights submitted by BIRCH CREEK RANCHES, INC. This protest is for, among others, the following reason.

1. PROTESTANTS have acquired what is known as the Wilding Ranch and have been assigned all of the right, title and interest of the Wildings in certain pending applications of Applicant for similar transfers. The Idaho Department of Water Resources (IDWR) has conducted hearings, listened to lengthy testimony, and taken substantial evidence. However, it has not rendered a decision. These applications raise many of the same issues and should not be considered until there is a decision rendered by the Department on the previous applications. Otherwise, PROTESTANT will be required to expend considerable sums duplicating testimony already before IDWR.

2. The proposed application will injure the water rights of PROTESTANT.

3. The proposed application does not take into consideration transmission losses from the existing point of diversion to the new point of diversion.

4. The proposed transfer does not take into consideration percolation or recharge rights lost by moving the point of diversion.

5. The proposed application does not adequately take into consideration priority rights already existing on Birch Creek.

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MAY 27 1991

6. Applicant has neither ditch rights nor a permanent place for the transfer of use. Applicant may have a one year lease for the transfer but no permanent or semi-permanent location.

7. The application will result in an expansion of the Applicant's existing water rights.

8. Such other and further reasons as may be determined and/or discovered in the course of hearing and/or considering these applications.

DATED: May 3, 1991.


BLAIR GROVER
Attorney for LaVar and Louise
Newman

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MAY 27 1993

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MAY - 3 1991

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Department of Water Resources

RE: APPLICATION OF BIRCH CREEK RANCHES, INC. Eastern District Office

32-2057

TO: Idaho Department of Water Resources
150 Shoup Avenue
Idaho Falls, Idaho 83402

COMES NOW LAVAR NEWMAN and LOUISE J. NEWMAN, hereinafter referred to as PROTESTANTS, and protest the Application and Amended Application for Transfer of Water Rights submitted by BIRCH CREEK RANCHES, INC. This protest is for, among others, the following reason.

1. PROTESTANTS have acquired what is known as the Wilding Ranch and have been assigned all of the right, title and interest of the Wildings in certain pending applications of Applicant for similar transfers. The Idaho Department of Water Resources (IDWR) has conducted hearings, listened to lengthy testimony, and taken substantial evidence. However, it has not rendered a decision. These applications raise many of the same issues and should not be considered until there is a decision rendered by the Department on the previous applications. Otherwise, PROTESTANT will be required spend considerable sums duplicating testimony already before

2. The proposed application will injure the water rights of

3. The proposed application does not take into consideration mission losses from the existing point of diversion to the new point of diversion.

4. The proposed transfer does not take into consideration percolation or recharge rights lost by moving the point of diversion.

5. The proposed application does not adequately take into consideration priority rights already existing on Birch Creek.

MICROFILMED

MAY 27 1999

6. Applicant has neither ditch rights nor a permanent place for the transfer of use. Applicant may have a one year lease for the transfer but no permanent or semi-permanent location.

7. The application will result in an expansion of the Applicant's existing water rights.

8. Such other and further reasons as may be determined and/or discovered in the course of hearing and/or considering these applications.

DATED: May 3, 1991.


BLAIR GROVER
Attorney for LaVar and Louise
Newman

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MAY 27 1999

LAW OFFICES OF
BRECK BARTON & ASSOCIATES, P.A.
305 WEST MAIN
REXBURG, IDAHO 83440

BRECK H. BARTON

P.O. Box 100
(208) 356-4880

May 7, 1991

Idaho Department of Water Resources
150 Shoup Avenue, #15
Idaho Falls, ID 83401

Re: Birch Creek Ranches/Wagoner Transfer

Gentlemen:

This letter will confirm the understanding and agreement reached between Ted Sorenson dba Birch Creek Ranches and Mac and Betty Wagoner regarding their intention to exchange water. As you are aware, a transfer application has been filed but the intent was that Wagoners would have a full 4.0 cfs at their point of diversion only with an earlier priority for their diversion based upon the earlier decreed rights previously held by Simmons.

We understand that the Department is treating the proposed "transfer" of the Wagoner/Simmons water as an exchange of water rights which is the intent.

Very truly yours,


Breck Barton

BB/djf

cc: Mac and Betty Wagoner
Kent Foster
Don Shenton

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MAY 27 1999

Law Offices of
Breck Barton & Associates, P.A.
305 West Main
P.O. Box 100
Rexburg, ID 83440
(208) 356-4880
FAX: (208) 356-0628

F A C S I M I L E T R A N S M I S S I O N

DATE: 5/7/91 TIME:

TO: IDWR

FAX #: 525-7177

FROM: Breck Barton

PAGES TO FOLLOW: 1

MESSAGE:

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MAY 27 1999

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MAY - 6 1991

Department of Water Resources
Eastern District Office

George C. Petersen, Jr., Esq.
PETERSEN, MOSS, OLSEN, MEACHAM & CARR
485 "E" Street
Idaho Falls, Idaho 83402
(208) 523-4650

Attorneys for D & D Enterprises, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION OF)
BIRCH CREEK RANCH'S, INC., TO)
EXCHANGE WATER RIGHTS, SELL WATER)
RIGHTS, AND CHANGE POINT OF)
DIVERSION AND PLACE OF USE OF)
WATERS OF BIRCH CREEK THE)
SUBJECT OF PERMIT NO'S 32-0067)
AND 32-0090.)

PROTEST OF D & D
ENTERPRISES, INC.

D & D Enterprises, Inc., an Idaho corporation, protestant, by and through its counsel of record, George C. Petersen, Jr., of the firm of PETERSEN, MOSS, OLSEN, MEACHAM & CARR, Attorneys, in care of George C. Petersen, Jr., of PETERSEN, MOSS, OLSEN, MEACHAM & CARR, 485 "E" Street, Idaho Falls, Idaho 83402, hereby enters its protest against approval of the application of Birch Creek Ranch's, Inc., to exchange water rights, sell water rights and change point of diversion and place of use of waters of Birch Creek the subject of permit no's. 32-0067 and 32-0090, on the following grounds:

1. D & D Enterprises Inc., a water user of the Birch Creek waters, is situated downstream from the properties described in that certain application of Birch Creek Ranch's, Inc., wherein

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MAY 21 1991

Birch Creek Ranch's, Inc., propose an exchange of the water rights, refer to a sale of certain water rights and further propose a change of point of diversion and place of use of waters of Birch Creek. From a preliminary review of the application of Birch Creek Ranch's, Inc., it appears that Birch Creek Ranch's, Inc., have totally failed to address bed loss, associated with said proposed change of point of diversion together with any other loss that might take place by the proposed transfer of the waters of Birch Creek to a new point of diversion. The failure to make an appropriate adjustment for loss of water occurring as a result of the transfer of the Birch Creek water from the old point of diversion to the new point of diversion would be detrimental to, and not in the best interest of, other downstream water users of Birch Creek and in particular this protestant.

2. Protestant has a number of queries concerning the validity of some of the proposed water right proposed to be transferred and thus requests that the burden of proof be on applicant to prove that said water rights to be transferred are in fact legitimate and bonafide and should be considered for transfer as proposed by applicant.

3. Applicant further fails to establish a method and/or procedure by which the water master could administer a bed loss in making an appropriate distribution of the waters of Birch Creek to applicant as a water user as compared to the other water users effected by the proposed transfer all to the end that the requested transfer will be equitable to all water users of Birch Creek.

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MAY 7 1960

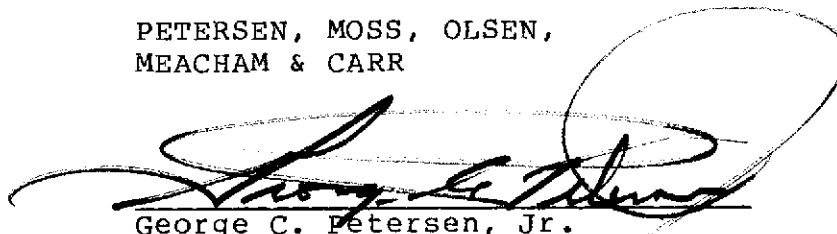
4. In the event the application, heretofore addressed, is approved, said approval would substantially effect the water rights of this applicant and in effect applicant would be injured by the transfer, all in violation of the rights intended to be protected under Idaho Code § 42-222.

5. Approval of the application of applicant as proposed, would constitute an enlargement of the use of the water rights of applicant, that is, would increase applicant's water rights all of which would result in a substantial loss to be suffered by this protestant and other water users situated downstream.

6. The change sought by applicant is not in the local public interest.

DATED This 6th day of May, 1991.

PETERSEN, MOSS, OLSEN,
MEACHAM & CARR



George C. Petersen, Jr.
Attorneys for
D & D Enterprises, Inc.

jih/2130G

MICROFILMED

MAY 27 1991

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 6th day of May, 1991, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered as defined by Rule 5(b), I.R.C.P.

Persons Served:

Jerry R. Rigby, Esq.
P.O. Box 250
Rexburg, ID 83440-0250

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

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

Mr. James DeMordaunt
P.O. Box 5
Rexburg, ID 83440

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

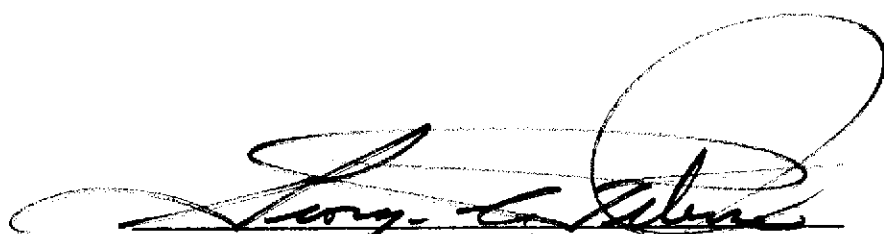
Mr. Ted Sorenson
550 Linden Dr.
Idaho Falls, ID 83401

Mr. Steve Phillips
HC 61 Box 1260
Dubois, ID 83423

Don Shenton
Dubois, ID 83423

Method of Service:

(X) mail () hand () fax


George C. Petersen, Jr.

MICROFILMED

MAY 21 1991

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
MICHAEL D. CRAPO
GAYLE A. SORENSON
DONALD L. HARRIS
RANDALL B. REED
MARIE T. FEELEY
JOHN G. SIMMONS
ROBERT M. FOLLETT

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

February 12, 1991

FEB 12 1991

RECEIVED

FEB 12 1991

Idaho Department of Water Resources
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

Department of Water Resources
Eastern District Office

Gentlemen:

We are in receipt of a copy of a letter from Mr. Breck Barton to Mr. Ron Carlson, dated January 21, 1991, and the application for transfer that was enclosed therewith for transfer of Rights Nos. 32-0102, 32-0073, 32-0085, 32-0077, 32-0086, 32-0078, 32-0087, and 32-0079. As Mr. Barton in that letter advised we would be doing, we are enclosing herewith two amended applications for transfer.

Because of the agreement with Wagoners to transfer portions of the rights sought to be transferred by our application of April 20, 1989, to lands of Wagoners', we have split the amended applications into two separate pieces; the first seeks to transfer Right No. 32-0067 and half of right No. 32-0090 to the Wagoner lands, and the second seeks to transfer portions of Rights Nos. 32-0090, 32-0093, 32-0068, 32-0061C, 32-0069, 32-0089, 32-0092, 32-0091, and 32-0101, held by Birch Creek Ranches, to lands of the D & D Enterprises under a lease arrangement with D & D.

Even though we have filed these as amended applications, we have enclosed a filing fee of \$100.00 in case you conclude that further publication of notice is necessary. If we can provide additional information or assist in any manner, please

MICROFILMED

MAR 27 1991

February 12, 1991
Page 2

do not hesitate to call upon us. We understand that all involved are anxious to have this matter finalized with as much dispatch as possible.

Yours very truly,



Kent W. Foster

#6936.00/srs

Enclosure

cc: Mr. Ted Sorenson

MICROFILMED
MAY 27 1995

NOTICE OF PROPOSED CHANGE OF WATER RIGHTS

The following three transfers are based upon an agreement between Birch Creek Ranches & Mac Wagoner, and are dependent upon approval of all three applications.

NO. 32-00102, ETC.

Notice is hereby given that Mac or Betty Wagoner has applied to the Department of Water Resources to change point of diversion and place of use of the waters of Birch Creek. The right sought to be changed is evidenced by Decrees and recorded as follows:

Decreed to Samuel Goddard in case of Frank Reno, et al, vs. J.R. Richards dated October 2, 1894.

Decree No. 32-00102

AMOUNT: 4.00 cfs PRIORITY: May 10, 1889
Place of use not listed in decree

Decreed to Samuel Goddard in case of Agnus Reno vs. J.R. Richards dated September 6, 1922.

Decree No. 0085

AMOUNT: .2 cfs PRIORITY: May 10, 1910

Decree No. 0086

AMOUNT: .2 cfs PRIORITY: May 1, 1911

Decree No. 0087

AMOUNT: .2 cfs PRIORITY: May 1, 1912

The water is used to irrigate 120 acres within the SENW, NESW, NWSE, SEC 9, T 9N, R 30E, B.M.

Decreed to George Goddard in case of Agnus Reno vs. J.R. Richards dated September 6, 1922.

Decree No. 0073

AMOUNT: .2 cfs PRIORITY: May 15, 1909

Decree No. 0077

AMOUNT: .2 cfs PRIORITY: May 15, 1910

Decree No. 0078

AMOUNT: .2 cfs PRIORITY: May 15, 1911

Decree No. 0079

AMOUNT: .8 cfs PRIORITY: May 15, 1913

The water is used to irrigate 160 acres within the W1/2NE, SENE, NENW, SEC 9, T 9N, R 30E, B.M.

POINTS OF DIVERSION NOT LISTED IN ABOVE DECREES

TO BE CHANGED AS FOLLOWS:

Only 6 cfs will be diverted from the SESW, SEC 34, T 9N, R 30E, CLARK COUNTY and used from April 1 to November 1 to irrigate 960 acres within the SESW, W1/2SE, SESE, SEC 12, T 8N, R 31E; E1/2SE, SEC 1; N1/2SW, SE, SEC 10; S1/2NW, SW, SEC 11; N1/2NW, SEC 14, T 8N, R 32E; E1/2SW, W1/2SE, SEC 6, T 8N, R 33E, B.M.

MICROFILMED
MAR 27 1963

NO. 32-0061C, ETC.

Notice is hereby given that Birch Creek Ranches, Inc. has applied to the Department of Water Resources to change point of diversion and place of use of the waters of Birch Creek. The right sought to be changed is evidenced by Decrees and recorded as follows:

Decreed to C.B. Watts

Decree No. 32-0090

AMOUNT: 1.6 cfs PRIORITY: May 10, 1886

Decree No. 32-0089

AMOUNT: 2.5 cfs PRIORITY: May 10, 1888

Decreed to Edward M. Kaufman

Decree No. 32-0093

AMOUNT: 1.56522 cfs PRIORITY: May 10, 1886

Decree No. 32-0092

AMOUNT: 2.44565 cfs PRIORITY: May 10, 1888

Decree No. 32-0091

AMOUNT: .48913 cfs PRIORITY: May 1, 1901

Decreed to Wood Livestock Co.

Decree No. 32-0068

AMOUNT: 3.2 cfs PRIORITY: May 10, 1887

Decree No. 32-0069

AMOUNT: 3.2 cfs PRIORITY: May 10, 1888

Decreed to Jerome F. Reno

Decree No. 32-0061C

AMOUNT: .4 cfs PRIORITY: May 10, 1888

in case of Agnes B. Reno, et al, vs. J.R. Richards, et al, dated September 6, 1922 in 9th District Court county of Fremont.

POINT(S) OF DIVERSION: NESW, SEC 11; NENE, SEC 14; NWNE, NESE, SENE, SEC 24, T 10N, R 29E; SWSW, SEC 29; NWNW, SEC 32, T 10N, R 30E, B.M.

The water is used from April 1 to November 1 to irrigate 960 acres within the W1/2NW, SENW, NESW, W1/2SE, SESE, SEC 11; SWSW, SEC 12; W1/2NW, NWSW, SEC 13; E1/2NE, SEC 14; SESE, SEC 24; NENE, SEC 25, T 10N, R 29E, B.M.; SWNW, W1/2SW, SESW, SWSE, SEC 19; SWSW, SEC 29; NE, N1/2NW, SENW, SEC 30; W1/2NE, N1/2NW, SENW, NESW, W1/2SE, SEC 32, T 10N, R 30E, B.M.

Decree No. 32-0101 Decreed to Thomas J. Weimer in case of Agnes B. Reno, et al, vs. J.R. Richards, et al, dated September 6, 1922 in 9th District Court county of Fremont.

AMOUNT: 2.9 cfs PRIORITY: June 4, 1909

POINT OF DIVERSION: SESENE, SEC 3, T 10N, R 29E, CLARK COUNTY

The water is used from April 1 to November 1 to irrigate 64 acres of land within the SWSW, SEC 2; SENE, E1/2SE, SEC 3, T 10N, R 29E, B.M.

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MAY 27 1994

TO BE CHANGED AS FOLLOWS:

Only 17.5 cfs will be diverted from the SESW, SEC 34, T 9N, R 30E, B.M. (New Reno Diversion) and used to irrigate 960 acres within the SESW, NWSE, S1/2SE, SEC 12, T 8N, R 31E; E1/2SE, SEC 1; N1/2SW, SE, SEC 10; S1/2NW, SW, SEC 11; N1/2NW, SEC 14, T 8N, R 32E; E1/2SW, W1/2SE, SEC 6, T 8N, R 33E, B.M.

NO.'S 32-0067 & 32-0090

Notice is hereby given for the purposed amendment of application No.'s 32-0067 & 32-0090 by Birch Creek Ranches, Inc. to change point of diversion and place of use of the waters Birch Creek. The rights sought to be changed are evidenced by Decrees and recorded as follows:

Decreed to Wood Livestock Co.

Decree No. 32-0067

AMOUNT: 3.2 cfs

PURPOSES FROM: Irrigation April 1 to November 1

AMOUNT: .8 cfs

PURPOSES FROM: Stockwater March 1 to December 1

PRIORITY: September 10, 1882

Decreed to C.B. Watts.

Decree No. 32-0090

AMOUNT: 1.6 cfs PRIORITY: May 10, 1886

in case of Agnes B. Reno, et al, vs. J.R. Richards, et al, dated September 6, 1922 in 9th District Court county of Fremont.

POINT(S) OF DIVERSION: NESW, SEC 11; NENE, SEC 14; NWNE, NESE, SENE, SEC 24, T 10N, R 29E; SWSW, SEC 29; NWNW, SEC 32, T 10N R 30E, B.M.

The water is used from April 1 to November 1 to irrigate 960 acres within the W1/2NW, SENW, NESW, W1/2SE, SESE, SEC 11; SWSW, SEC 12; W1/2NW, NWSW, SEC 13; E1/2NE, SEC 14; SESE, SEC 24; NENE, SEC 25, T 10N, R 29E, B.M.; SWNW, W1/2SW, SESW, SWSE, SEC 19; SWSW, SEC 29; NE, N1/2NW, SENW, SEC 30; W1/2NE, N1/2NW, SENW, NESW, W1/2SE, SEC 32, T 10N, R 30E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted from the SENENW(LOT 3), SEC 5, T 9N, R 30E, (WAGONER DIVERSION) and used to irrigate 339 acres of land within the NESW, NWSW(LOT 6), SWSW(LOT 7), SESW, SWSE, SEC 4; SENE, E1/2SE, SEC 5; W1/2NE, NW, E1/2SW, W1/2SE, SEC 9, T 9N, R 30E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID, 83402, on or before MAY 6, 1991.

R. Keith Higginson
Director

Published in the LEWISTON MORNING TRIBUNE on APRIL 18 & 25, 1991.

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MAY 27 1993

MEMORANDUM

TO: FILE 32-000678

FROM: PAM SKAGGS

RE: TRANSFER # 3553

DATE: 7/16/93

Original Transfer Application, Form and correspondence regarding the above referenced Transfer is located within file # 32-000678 1C.

MICROFILMED

APR 21 1993

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

MICROFILMED

MAY 27 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,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

MICROFILMED

MAY 27 1993

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

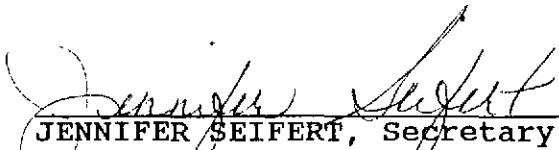
George Peterson
485 "E" Street
Idaho Falls, ID 83402

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

MICROFILMED

MAY 27 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

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

MICROFILMED
MAY 27 1995



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

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:

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

MICROFILMED

MAY 27 1992



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

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7/27/2 / 904



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 that reads "Gary Spackman".

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

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MAY 27 1992



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

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,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

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NOV 2 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

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

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NOV 21 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

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.

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

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MAY 7 1992



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

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,

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

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

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MAY 27 1994

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FALLS OFFICE

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
MICHAEL D. CRAPO
GAYLE A. SORENSON, P.A.
DONALD L. HARRIS
MARIE T. TYLER
JOHN G. SIMMONS
ROBERT M. FOLLETT
KUMEN L. TAYLOR
JAMES K. SLAVENS

WEST ONE BANK
P.O. BOX 51030
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

KEY FINANCIAL CENTER
702 W. IDAHO SUITE 610
BOISE, IDAHO 83702

TELEPHONE (208) 343-0820
TELEFAX (208) 343-8078

BOISE OFFICE

WM. LYMAN BELNAP, P.A.
RANDALL B. REED
RONALD D. CHRISTIAN

ARTHUR W. HOLDEN
(1877-1967)
ROBERT B. HOLDEN
(1911-1971)
TERRY L. CRAPO
(1939-1982)
WILLIAM S. HOLDEN
(1907-1988)

October 3, 1991

RECEIVED
OCT 07 1991

Department of Water Resources

Gary Spackman, Supervisor
Water Rights Permits Section
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RE: In the Matter of the Application for Transfer No.
32-0061C/Etc., and 32-0067/0090 in the Name of Birch
Creek Ranches and No. 32-0102/Etc., in the Name of
Mac or Betty Wagoner

Dear Mr. Spackman:

As nearly as we can determine, there is no significant progress being made regarding this matter. Our recollection was that we were looking toward the second week of November for a final hearing date, but as we review our notes, some questions arise in our minds about what needs to be done to have that happen.

Perhaps someone else's notes are more clear than mine, but from my notes it appears that a decision with what to do about the transcript or the tapes of the transcript from the former proceeding is the event that triggers the next time period.

As we understood it, we were looking forward to another status conference or perhaps a pre-trial conference some forty-five days after the decision about what to do with the tapes of the prior proceeding was made. To our knowledge, no decision has yet been made about what to do with that previous record.

MICROFILMED

200 2 / 1991

Gary Spackman, Supervisor
October 3, 1991
Page 2

We have a copy of a letter from Mr. Newman's attorney, Blair Grover, dated July 12, 1991, in which he indicates that he has authority from his client to stipulate to the admissibility and use of the prior record, but he did not go so far as to stipulate to its use and admissibility.

We were aware that the tapes and the files were left here in the Idaho Falls office for Mr. Grover's review, but we do not know whether he has yet had an opportunity to familiarize himself with those items.

Our client is prepared to stipulate to the admissibility and use of the prior record and it may be that most of the other parties are in a similar position. However, we think that some deadline needs to be set on accomplishing this step and then perhaps a date needs to be scheduled for a pre-trial or status conference so that we can get ready for the final hearing. We also need a date for the hearing so that this matter does not sit and stagnate. We are anxious to have it resolved as soon as possible and we, therefore, would appreciate it if you would consider setting some deadlines and dates so that the matter can proceed.

We will look forward to hearing from you on this matter as soon as possible.

Yours very truly,



Kent W. Foster

#6936.00/srs

cc: Breck H. Barton, Esq.
George C. Petersen, Jr., Esq.
Blair J. Grover, Esq.

MICROFILMED

NOV 27 1991

BLAIR GROVER
CHARTERED
LAW OFFICE
P. O. BOX 36
RIGBY, IDAHO 83442-0036
(208) 745-6653

RECEIVED
SEP 09 1991

Department of Water Resources

September 6, 1991

Mr. Gary Spackman
Department of Water Resources
Water Right Permits Section
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

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

Dear Mr. Spackman:

This letter is primarily to advise you of the status of the above entitled matter. Much effort has gone into getting it resolved. The parties generally agreed Don Shenton, Water Master, might have adequate influence among them to suggest a settlement acceptable to all of them. He has met with Birch Creek Ranches and D & D and presented what he believes is a fair settlement. LaVar Newman was seriously injured, but I will be meeting with LaVar and Mr. Shenton in the next few days to go over the proposed settlement. While no one has agreed in writing, it is my understanding his proposal is generally acceptable. Obviously, since no one is bound it could still fall apart but we are reasonably optimistic we will get it resolved.

With that in mind, we have not pursued preparation as we otherwise would have. For example, it doesn't make a lot of sense to spend a day or two listening to the tapes, making a decision about transcription, or having them transcribed, if we ultimately settle. The same is true with regard to expert witness preparation and fees.

I mention that because it is unlikely we can meet deadlines or the hearing date if the settlement falls apart. I spoke with Mr. Foster and Mr. Peterson and both agree we would likely need different dates. Hopefully that will not be a problem if it becomes necessary.

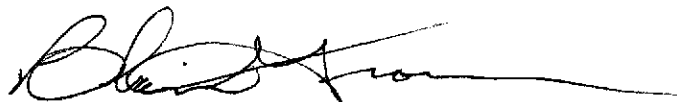
MICROFILMED

SEP 11 1991

Mr. Gary Spackman
September 6, 1991
Page 2

Thanks for your consideration.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Blair Grover", with a long horizontal flourish extending to the right.

BLAIR GROVER

BG:cj
cc: LaVar Newman
George Peterson
Breck Barton
Kent Foster
Ron Carlson

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MAY 27 1993



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

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MAY 27 1995



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

Dear Mr. Barton:

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.

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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,

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

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

MICROFILMED

MAY 27 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

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

Dear Mr. Grover:

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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,

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

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

MICROFILMED

MAY 27 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

Dear Mr. Petersen:

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.

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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,

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

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

MICROFILMED

MAY 27 1993

July 3, 1991

Jerry Rigby
P.O. Box 250
Rexburg, ID 83440

Dear Mr. Rigby:

After discussing the hearing scheduled for July 8, 1991 with several of the parties, it appears that there are unresolved issues regarding the scope of proof, as well as confusion about whether the scheduled meeting will be a hearing or a prehearing conference. Although the notice clearly stated that a hearing would be conducted on Monday, July 8, issues of proof and questions regarding the scope of the Department's review must be addressed prior to the hearing.

As a result the hearing scheduled for July 8 will be a prehearing conference. The parties should come ready to discuss and identify issues of law, including the issue of what facts the Department should hear de novo. The parties should also be prepared to discuss issues of fact, and stipulate to undisputed facts. Possible witnesses, including experts should be identified. Consolidation of witnesses and testimony, will be discussed. A future hearing date will be identified.

Sincerely,

Harold W. Jones

HWJ:lk

MICROFILMED

MAY 27 1995

July 3, 1991

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

Dear Mr. Barton:

After discussing the hearing scheduled for July 8, 1991 with several of the parties, it appears that there are unresolved issues regarding the scope of proof, as well as confusion about whether the scheduled meeting will be a hearing or a prehearing conference. Although the notice clearly stated that a hearing would be conducted on Monday, July 8, issues of proof and questions regarding the scope of the Department's review must be addressed prior to the hearing.

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Sincerely,

Harold W. Jones

HWJ:lk

MICROFILMED

MAY 21 1992

July 3, 1991

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

Dear Mr. and Mrs. Wagoner:

After discussing the hearing scheduled for July 8, 1991 with several of the parties, it appears that there are unresolved issues regarding the scope of proof, as well as confusion about whether the scheduled meeting will be a hearing or a prehearing conference. Although the notice clearly stated that a hearing would be conducted on Monday, July 8, issues of proof and questions regarding the scope of the Department's review must be addressed prior to the hearing.

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Sincerely,

Harold W. Jones

HWJ:lk

MICROFILMED

MAY 27 1993

July 3, 1991

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

Dear Mr. Grover:

After discussing the hearing scheduled for July 8, 1991 with several of the parties, it appears that there are unresolved issues regarding the scope of proof, as well as confusion about whether the scheduled meeting will be a hearing or a prehearing conference. Although the notice clearly stated that a hearing would be conducted on Monday, July 8, issues of proof and questions regarding the scope of the Department's review must be addressed prior to the hearing.

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Sincerely,

Harold W. Jones

HWJ:lk

MICROFILMED

MAY 2 1994

July 3, 1991

Ted Sorensen
550 Linden Dr.
Idaho Falls, ID 83402

Dear Mr. Sorensen:

After discussing the hearing scheduled for July 8, 1991 with several of the parties, it appears that there are unresolved issues regarding the scope of proof, as well as confusion about whether the scheduled meeting will be a hearing or a prehearing conference. Although the notice clearly stated that a hearing would be conducted on Monday, July 8, issues of proof and questions regarding the scope of the Department's review must be addressed prior to the hearing.

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Sincerely,

Harold W. Jones

HWJ:lk

MICROFILMED

MAY 27 1991

July 3, 1991

Kent Foster
P.O. Box 50130
Idaho Falls, ID 83402

Dear Mr. Foster:

After discussing the hearing scheduled for July 8, 1991 with several of the parties, it appears that there are unresolved issues regarding the scope of proof, as well as confusion about whether the scheduled meeting will be a hearing or a prehearing conference. Although the notice clearly stated that a hearing would be conducted on Monday, July 8, issues of proof and questions regarding the scope of the Department's review must be addressed prior to the hearing.

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Sincerely,

Harold W. Jones

HWJ:lk

MICROFILMED

JUL 7 1991

July 3, 1991

George Petersen
485 E. Street
Idaho Falls, ID 83402

Dear Mr. Petersen:

After discussing the hearing scheduled for July 8, 1991 with several of the parties, it appears that there are unresolved issues regarding the scope of proof, as well as confusion about whether the scheduled meeting will be a hearing or a prehearing conference. Although the notice clearly stated that a hearing would be conducted on Monday, July 8, issues of proof and questions regarding the scope of the Department's review must be addressed prior to the hearing.

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Sincerely,

Harold W. Jones

HWJ:lk

MICROFILMED

MAY 27 1995

July 3, 1991

Janice M. Judy
3580 W. Elswood
Idaho Falls, ID 83402

Dear Ms. Judy:

After discussing the hearing scheduled for July 8, 1991 with several of the parties, it appears that there are unresolved issues regarding the scope of proof, as well as confusion about whether the scheduled meeting will be a hearing or a prehearing conference. Although the notice clearly stated that a hearing would be conducted on Monday, July 8, issues of proof and questions regarding the scope of the Department's review must be addressed prior to the hearing.

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Sincerely,

Harold W. Jones

HWJ:lk

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MAY 27 1992



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

SK Jones / EYE

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 2, 1991

RECEIVED

JUL 3 - 1991

Rocky Ross
Don Phillips
Box 10
Howe, ID 83244

Department of Water Resources
Eastern District Office

RE: Transfer Application No. 3809/Right No.s ³⁰ ~~31~~-0061 thru ³⁰ ~~31~~-0064

Gentlemen:

The above referenced transfer application was recently forwarded to the state office for final review and processing.

The transfer application proposes changing the place of use for the above decreed surface water rights. Our review of these rights show that there are groundwater rights appurtenant to the same land, but you are not proposing to transfer the groundwater rights to the new place of use with the surface water rights. Your application states that the groundwater rights will continue to be used on the lands from which the surface water rights will be moved. As a result, the groundwater will be used as a primary source of water rather than a supplemental source of water as it has traditionally been used.

Generally, unstacking the overlapping groundwater-surface water rights and changing the groundwater rights from supplemental rights to primary rights would result in an expansion of the groundwater rights. The department can not authorize a proposed transfer if the change would result in expansion of any rights. In the past, the department has allowed unstacking of groundwater rights which overlap older priority surface water rights. This allowance pertained only to those areas which were not part of any designated management area or which were not subject to any moratorium on new appropriations. Since the settlement of the Swan Falls litigation in 1984 and 1985, much of the southern part of the state is now designated as the Swan Falls Trust Water Area. Your water rights and land are located within this area. While the state is currently allowing new appropriations of water in the trust area, there are certain statutes which the department must follow in allocating trust water. Any use of water which would result in additional irrigated acreage after 1984 must be accomplished through an approved trust water permit, and can not be accomplished through a transfer which unstacks groundwater and surface water rights.

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MAY 27 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

May 30, 1991

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

RE: Application for Transfer No. 32-0067/0092 AMENDED
BIRCH CREEK RANCHES

Kent Foster
Attorney at Law
PO Box 50130
Idaho Falls, ID 83405

Dear Mr. Foster:

Enclosed please find a copy of protests filed against the above referenced application. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?
3. Will the proposed use under this transfer conflict with the local public interest?

The applicant must be prepared to present evidence and/or testimony addressing each of the three items should an additional hearing be necessary. You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

MICROFILMED

MAY 27 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

May 30, 1991

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

RE: App. for Transfer No. 32-0067/0090 BIRCH CREEK RANCHES

Blair Grover
Attorney at Law
PO Box 36
Rigby, ID 83442-0036

Dear Mr. Grover:

This letter acknowledges receipt of the protest filed in behalf of Lavar and Louise J. Newman against the above referenced application for transfer. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfers?
2. Does the change constitute an enlargement in the use of the original rights?
3. Will the proposed use under these transfers conflict with the local public interest?

The protestant must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing. We appreciate your support in this matter.

If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

MICROFILMED

MAY 27 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

May 30, 1991

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

RE: Application for Transfer No. 32-0067/0092 AMENDED
BIRCH CREEK RANCHES

Kent Foster
Attorney at Law
PO Box 50130
Idaho Falls, ID 83405

Dear Mr. Foster:

Enclosed please find a copy of protests filed against the above referenced application. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
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3. Will the proposed use under this transfer conflict with the local public interest?

The applicant must be prepared to present evidence and/or testimony addressing each of the three items should an additional hearing be necessary. You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

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MAY 27 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

May 30, 1991

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

RE: App. for Transfer No. 32-0067/0090 BIRCH CREEK RANCHES

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

Dear Mr. Petersen:

This letter acknowledges receipt of the protest filed in behalf of D & D Enterprises against the above referenced application for transfer. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfers?
2. Does the change constitute an enlargement in the use of the original rights?
3. Will the proposed use under these transfers conflict with the local public interest?

The protestant must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing. We appreciate your support in this matter.

If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

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MAY 27 1993

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MAY - 6 1991

Department of Water Resources
Eastern District Office

George C. Petersen, Jr., Esq.
PETERSEN, MOSS, OLSEN, MEACHAM & CARR
485 "E" Street
Idaho Falls, Idaho 83402
(208) 523-4650

Attorneys for D & D Enterprises, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION OF)
BIRCH CREEK RANCH'S, INC., TO)
EXCHANGE WATER RIGHTS, SELL WATER)
RIGHTS, AND CHANGE POINT OF)
DIVERSION AND PLACE OF USE OF)
WATERS OF BIRCH CREEK THE)
SUBJECT OF PERMIT NO'S 32-0067)
AND 32-0090.)

PROTEST OF D & D
ENTERPRISES, INC.

D & D Enterprises, Inc., an Idaho corporation, protestant, by and through its counsel of record, George C. Petersen, Jr., of the firm of PETERSEN, MOSS, OLSEN, MEACHAM & CARR, Attorneys, in care of George C. Petersen, Jr., of PETERSEN, MOSS, OLSEN, MEACHAM & CARR, 485 "E" Street, Idaho Falls, Idaho 83402, hereby enters its protest against approval of the application of Birch Creek Ranch's, Inc., to exchange water rights, sell water rights and change point of diversion and place of use of waters of Birch Creek the subject of permit no's. 32-0067 and 32-0090, on the following grounds:

1. D & D Enterprises Inc., a water user of the Birch Creek waters, is situated downstream from the properties described in that certain application of Birch Creek Ranch, Inc., wherein

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MAY 21 1991

Birch Creek Ranch's, Inc., propose an exchange of the water rights, refer to a sale of certain water rights and further propose a change of point of diversion and place of use of waters of Birch Creek. From a preliminary review of the application of Birch Creek Ranch's, Inc., it appears that Birch Creek Ranch's, Inc., have totally failed to address bed loss, associated with said proposed change of point of diversion together with any other loss that might take place by the proposed transfer of the waters of Birch Creek to a new point of diversion. The failure to make an appropriate adjustment for loss of water occurring as a result of the transfer of the Birch Creek water from the old point of diversion to the new point of diversion would be detrimental to, and not in the best interest of, other downstream water users of Birch Creek and in particular this protestant.

2. Protestant has a number of queries concerning the validity of some of the proposed water right proposed to be transferred and thus requests that the burden of proof be on applicant to prove that said water rights to be transferred are in fact legitimate and bonafide and should be considered for transfer as proposed by applicant.

3. Applicant further fails to establish a method and/or procedure by which the water master could administer a bed loss in making an appropriate distribution of the waters of Birch Creek to applicant as a water user as compared to the other water users effected by the proposed transfer all to the end that the requested transfer will be equitable to all water users of Birch Creek.

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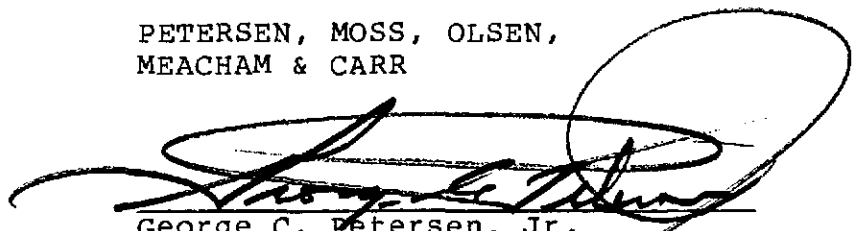
4. In the event the application, heretofore addressed, is approved, said approval would substantially effect the water rights of this applicant and in effect applicant would be injured by the transfer, all in violation of the rights intended to be protected under Idaho Code § 42-222.

5. Approval of the application of applicant as proposed, would constitute an enlargement of the use of the water rights of applicant, that is, would increase applicant's water rights all of which would result in a substantial loss to be suffered by this protestant and other water users situated downstream.

6. The change sought by applicant is not in the local public interest.

DATED This 6th day of May, 1991.

PETERSEN, MOSS, OLSEN,
MEACHAM & CARR



George C. Petersen, Jr.
Attorneys for
D & D Enterprises, Inc.

jih/2130G

MICROFILMED

MAY 2 / 1991

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 6th day of May, 1991, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered as defined by Rule 5(b), I.R.C.P.

Persons Served:

Jerry R. Rigby, Esq.
P.O. Box 250
Rexburg, ID 83440-0250

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

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

Mr. James DeMordaunt
P.O. Box 5
Rexburg, ID 83440

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

Mr. Ted Sorenson
550 Linden Dr.
Idaho Falls, ID 83401

Mr. Steve Phillips
HC 61 Box 1260
Dubois, ID 83423

Don Shenton
Dubois, ID 83423

Method of Service:

(X) mail () hand () fax



George C. Petersen, Jr.

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MAY 27 1991

RECEIVED

MAY - 6 1991

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
RE: APPLICATION OF BIRCH CREEK RANCHES, INC.
32-0067

Department of Water Resources
Eastern District Office

TO: Idaho Department of Water Resources
150 Shoup Avenue
Idaho Falls, Idaho 83402

COMES NOW LAVAR NEWMAN and LOUISE J. NEWMAN, hereinafter referred to as PROTESTANTS, and protest the Application and Amended Application for Transfer of Water Rights submitted by BIRCH CREEK RANCHES, INC. This protest is for, among others, the following reason.

1. PROTESTANTS have acquired what is known as the Wilding Ranch and have been assigned all of the right, title and interest of the Wildings in certain pending applications of Applicant for similar transfers. The Idaho Department of Water Resources (IDWR) has conducted hearings, listened to lengthy testimony, and taken substantial evidence. However, it has not rendered a decision. These applications raise many of the same issues and should not be considered until there is a decision rendered by the Department on the previous applications. Otherwise, PROTESTANT will be required to expend considerable sums duplicating testimony already before IDWR.

2. The proposed application will injure the water rights of PROTESTANT.

3. The proposed application does not take into consideration transmission losses from the existing point of diversion to the new point of diversion.

4. The proposed transfer does not take into consideration percolation or recharge rights lost by moving the point of diversion.

5. The proposed application does not adequately take into consideration priority rights already existing on Birch Creek.

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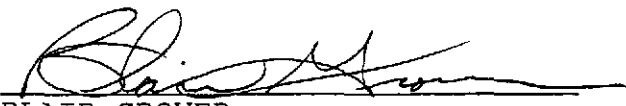
MAY 21 1991

6. Applicant has neither ditch rights nor a permanent place for the transfer of use. Applicant may have a one year lease for the transfer but no permanent or semi-permanent location.

7. The application will result in an expansion of the Applicant's existing water rights.

8. Such other and further reasons as may be determined and/or discovered in the course of hearing and/or considering these applications.

DATED: May 3, 1991.


BLAIR GROVER
Attorney for LaVar and Louise
Newman

MICROFILMED

MAY 27 1995



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

May 30, 1991

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

RE: App. for Transfer No. 32-0067/0090 BIRCH CREEK RANCHES

Blair Grover
Attorney at Law
PO Box 36
Rigby, ID 83442-0036

Dear Mr. Grover:

This letter acknowledges receipt of the protest filed in behalf of Lavar and Louise J. Newman against the above referenced application for transfer. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfers?
2. Does the change constitute an enlargement in the use of the original rights?
3. Will the proposed use under these transfers conflict with the local public interest?

The protestant must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing. We appreciate your support in this matter.

If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

MICROFILMED

MAY 27 1991

MAY 03 1991

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
MICHAEL D. CRAPO
GAYLE A. SORENSON
DONALD L. HARRIS
RANDALL B. REED
MARIE T. FEELEY
JOHN G. SIMMONS
ROBERT M. FOLLETT

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

MAY 03 1991

May 3, 1991

MAY 03 1991

Keith C. Wilson, Sr. Resource Agent
IDAHO DEPARTMENT OF WATER RESOURCES
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

RE: Birch Creek Ranches, Inc., Transfers -- Proof of
Ownership -- Tax Notices

Dear Mr. Wilson:

It has taken us some time to determine why the tax notices we sent to you did not include those referred to by you in your letter of April 3, 1991. We have now been able to review the necessary documents and are enclosing with this letter a copy of a recorded "Notice of Contract of Sale", with some language highlighted in yellow.

When Birch Creek Ranches, Inc., purchased the Simmons' property in 1989, Mr. Simmons retained what has been referred to as the "Gray Place". That appears to be the land described in the tax notice legal descriptions in your letter of April 3, 1991.

Although Mr. Simmons retained the "Gray Place", he did not retain any of the Birch Creek water rights appurtenant thereto. He retained only "any water rights in Miller Spring".

There may be some question as to what water rights exist exclusively in "Miller Spring". We understand it to be the position of both Mr. Simmons and Birch Creek Ranches, Inc., that any such rights are separate from and independent of the rights in Birch Creek purchased by Birch Creek Ranches, Inc., and sought to be transferred by the pending applications. We have reviewed two of the old decrees which refer to Miller Spring and it appears from both that although the right to the

MICROFILMED

MAY 22 1991

Keith C. Wilson, Sr. Resource Agent
May 3, 1991
Page 2

use of the waters of Miller Spring was not quantified therein, such right was considered to be in addition to and different from the rights to the use of the waters of Birch Creek. The 1894 decree provides under the paragraph numbered "Ninth":

That the defendants, Thomas Miller and David Miller, do have at all times a flow of 160 inches of water measured under 4 inch pressure of the waters of the said Birch Creek for the purpose of irrigating the lands described in their cross-complaint; their right to the use of the same to date from September 10th, 1882; and that they also do have the flow of 160 inches of water additional, measured under 4-inch pressure of the waters of said Birch Creek for the purpose of irrigating their lands above described; their right to the use of the same to date from May 10th, 1887.

That they also do have the use at all times of all the waters of that certain spring, a tributary of said Birch Creek, more fully described in the Finding herein, for domestic purposes, and for watering stock and irrigating the lands of said defendants, described in their cross-complaint.

The Judgment entered by the District Court of the Ninth Judicial District of the State of Idaho for Fremont County on September 6, 1922, contains similar language:

The said Wood Livestock Company, a corporation, aforesaid, as successor in interest of Thomas and David Miller, have at all times the use of three and two-tenths (3.2) cubic feet per second of time (one hundred sixty miners' inches) of the waters of the said Birch Creek, its right to the use of the same to date from the 10th day of September, 1882, to be used upon and become appurtenant to the following described lands: (Legal description omitted.)

That the said Wood Livestock Company, as the successor in interest of Thomas and David Miller, have at all times the use of three and two-tenths (3.2) cubic feet per second of time (one hundred sixty miners' inches) of the waters of the said Birch Creek, and also all of

RECORDED
MAY 27 1993

Keith C. Wilson, Sr. Resource Agent
May 3, 1991
Page 3

the waters of that certain spring, known as Miller's Spring, a tributary of the said Birch Creek; its right to the use of the same to date from the 10th day of May, 1887, to be used upon and become appurtenant to the following described lands. (Legal description omitted.)

We have a copy of the September 6, 1922, Judgment in which the number 32-0067 has been placed beside the 3.2 cfs of the waters of Birch Creek with a priority of September 10, 1882, and in which the number 32-0068 has been placed beside the 3.2 cfs of the waters of Birch Creek with a priority of May 10, 1887. It is true there does not appear to have been a number put beside "and also all of the waters of that certain spring, known as Miller Spring".

We also have a copy of what appears to be a decree list and which was given to Mr. Simmons many years ago by Ben Wilding. It is on a blue-green colored piece of a paper and appears to have been printed by an old ditto machine at the bottom of which someone has written "90" from Spring on Gray Place".

Whatever the ultimate result with respect to a separate right in Miller Spring, it seems clear that that is the only possible right that was reserved by Mr. Simmons in the Contract of Sale with Birch Creek Ranches, Inc. In fact at the time of the sale, Mr. Simmons was the president of Birch Creek Ranches, Inc., and was the individual who signed the original applications for transfer of most of these water rights, including 32-0068.

If we can provide any additional information, please feel free to call upon us at your convenience.

Yours very truly,


Kent W. Foster

#6936.00/srs

Enclosure

MICROFILMED
MAR 27 1991

11-Apr-1991

DON SHENTON
WATER DIST 32 D
PO BOX 33
DUBOIS ID 83423

RE: Application No. 32-00102,ETC, 32-0061C, ETC, &
32-0067/32-0090

Dear Watermaster:

Please find enclosed a copy of the above referenced application. Please review the application and submit any comments you may have to our Department as soon as possible. The last date of protest is May 6, 1991, and we are required to take action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Thank you for your cooperation in this matter.

Respectfully submitted,

Harold Jones
Water Rights Supervisor

HJ/rb
Enclosure

MICROFILMED

MAY 27 1991

11-Apr-1991

KENT FOSTER
FOR BIRCH CREEK RANCHES, INC.
PO BOX 50130
IDAHO FALLS ID 83405

RE: Application No. 32-0061C, ETC.

Dear Water Right Applicant:

The Department of Water Resources acknowledges receipt of your water right permit. This office is currently in the process of advertising the application in Post-Register and statewide on April 18 & 25, 1991. The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our state office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

HWJ/rb

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MAY 27 1991

09-Apr-1991

IDAHO STATESMAN
PO BOX 40
BOISE ID 83707

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before MAY 6, 1991.

Yours truly,

Rita Bodell
Secretary/Office Coordinator

Encl.

~~OK~~ error
RB

MICROFILMED

MAY 27 1991

09-Apr-1991

THE TIMES NEWS
PO BOX 548
TWIN FALLS ID 83303

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before MAY 6, 1991.

Yours truly,

Rita Bodell
Secretary/Office Coordinator

Encl.

OK
PB

MICROFILMED

MAY 27 1991

NOTICE OF PROPOSED CHANGE OF WATER RIGHTS

The following three transfers are based upon an agreement between Birch Creek Ranches & Mac Wagoner, and are dependent upon approval of all three applications.

NO. 32-00102, ETC.

Notice is hereby given that Mac or Betty Wagoner has applied to the Department of Water Resources to change point of diversion and place of use of the waters of Birch Creek. The right sought to be changed is evidenced by Decrees and recorded as follows:

Decreed to Samuel Goddard in case of Frank Reno, et al, vs. J.R. Richards dated October 2, 1894.

Decree No. 32-00102

AMOUNT: 4.00 cfs PRIORITY: May 10, 1889

Place of use not listed in decree

Decreed to Samuel Goddard in case of Agnus Reno vs. J.R. Richards dated September 6, 1922.

Decree No. 0085

AMOUNT: .2 cfs PRIORITY: May 10, 1910

Decree No. 0086

AMOUNT: .2 cfs PRIORITY: May 1, 1911

Decree No. 0087

AMOUNT: .2 cfs PRIORITY: May 1, 1912

The water is used to irrigate 120 acres within the SENW, NESW, NWSE, SEC 9, T 9N, R 30E, B.M.

Decreed to George Goddard in case of Agnus Reno vs. J.R. Richards dated September 6, 1922.

Decree No. 0073

AMOUNT: .2 cfs PRIORITY: May 15, 1909

Decree No. 0077

AMOUNT: .2 cfs PRIORITY: May 15, 1910

Decree No. 0078

AMOUNT: .2 cfs PRIORITY: May 15, 1911

Decree No. 0079

AMOUNT: .8 cfs PRIORITY: May 15, 1913

The water is used to irrigate 160 acres within the W1/2NE, SENE, NENW, SEC 9, T 9N, R 30E, B.M.

POINTS OF DIVERSION NOT LISTED IN ABOVE DECREES

TO BE CHANGED AS FOLLOWS:

Only 6 cfs will be diverted from the SESW, SEC 34, T 9N, R 30E, CLARK COUNTY and used from April 1 to November 1 to irrigate 960 acres within the SESW, W1/2SE, SESE, SEC 12, T 8N, R 31E; E1/2SE, SEC 1; N1/2SW, SE, SEC 10; S1/2NW, SW, SEC 11; N1/2NW, SEC 14, T 8N, R 32E; E1/2SW, W1/2SE, SEC 6, T 8N, R 33E, B.M.

MICROFILMED

MAY 2 1959

NO. 32-0061C, ETC.

Notice is hereby given that Birch Creek Ranches, Inc. has applied to the Department of Water Resources to change point of diversion and place of use of the waters of Birch Creek. The right sought to be changed is evidenced by Decrees and recorded as follows:

Decreed to C.B. Watts

Decree No. 32-0090

AMOUNT: 1.6 cfs PRIORITY: May 10, 1886

Decree No. 32-0089

AMOUNT: 2.5 cfs PRIORITY: May 10, 1888

Decreed to Edward M. Kaufman

Decree No. 32-0093

AMOUNT: 1.56522 cfs PRIORITY: May 10, 1886

Decree No. 32-0092

AMOUNT: 2.44565 cfs PRIORITY: May 10, 1888

Decree No. 32-0091

AMOUNT: .48913 cfs PRIORITY: May 1, 1901

Decreed to Wood Livestock Co.

Decree No. 32-0068

AMOUNT: 3.2 cfs PRIORITY: May 10, 1887

Decree No. 32-0069

AMOUNT: 3.2 cfs PRIORITY: May 10, 1888

Decreed to Jerome F. Reno

Decree No. 32-0061C

AMOUNT: .4 cfs PRIORITY: May 10, 1888

in case of Agnes B. Reno, et al, vs. J.R. Richards, et al, dated September 6, 1922 in 9th District Court county of Fremont.

POINT(S) OF DIVERSION: NESW, SEC 11; NENE, SEC 14; NWNW, NESE, SENE, SEC 24, T 10N, R 29E; SWSW, SEC 29; NWNW, SEC 32, T 10N, R 30E, B.M.

The water is used from April 1 to November 1 to irrigate 960 acres within the W1/2NW, SENW, NESW, W1/2SE, SESE, SEC 11; SWSW, SEC 12; W1/2NW, NWSW, SEC 13; E1/2NE, SEC 14; SESE, SEC 24; NENE, SEC 25, T 10N, R 29E, B.M.; SWNW, W1/2SW, SESW, SWSE, SEC 19; SWSW, SEC 29; NE, N1/2NW, SENW, SEC 30; W1/2NE, N1/2NW; SENW, NESW, W1/2SE, SEC 32, T 10N, R 30E, B.M.

Decree No. 32-0101 Decreed to Thomas J. Weimer in case of Agnes B. Reno, et al, vs. J.R. Richards, et al, dated September 6, 1922 in 9th District Court county of Fremont.

AMOUNT: 2.9 cfs PRIORITY: June 4, 1909

POINT OF DIVERSION: SESENE, SEC 3, T 10N, R 29E, CLARK COUNTY

The water is used from April 1 to November 1 to irrigate 64 acres of land within the SWSW, SEC 2; SENE, E1/2SE, SEC 3, T 10N, R 29E, B.M.

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MAY 27 1959

TO BE CHANGED AS FOLLOWS:

Only 17.5 cfs will be diverted from the SESW, SEC 34, T 9N, R 30E, B.M. (New Reno Diversion) and used to irrigate 960 acres within the SESW, NWSE, S1/2SE, SEC 12, T 8N, R 31E; E1/2SE, SEC 1; N1/2SW, SE, SEC 10; S1/2NW, SW, SEC 11; N1/2NW, SEC 14, T 8N, R 32E; E1/2SW, W1/2SE, SEC 6, T 8N, R 33E, B.M.

NO.'S 32-0067 & 32-0090

Notice is hereby given for the purposed amendment of application No.'s 32-0067 & 32-0090 by Birch Creek Ranches, Inc. to change point of diversion and place of use of the waters Birch Creek. The rights sought to be changed are evidenced by Decrees and recorded as follows:

Decreed to Wood Livestock Co.

Decree No. 32-0067

AMOUNT: 3.2 cfs

PURPOSES FROM: Irrigation April 1 to November 1

AMOUNT: .8 cfs

PURPOSES FROM: Stockwater March 1 to December 1

PRIORITY: September 10, 1882

Decreed to C.B. Watts.

Decree No. 32-0090

AMOUNT: 1.6 cfs PRIORITY: May 10, 1886

in case of Agnes B. Reno, et al, vs. J.R. Richards, et al, dated September 6, 1922 in 9th District Court county of Fremont.

POINT(S) OF DIVERSION: NESW, SEC 11; NENE, SEC 14; NWNE, NESE, SENE, SEC 24, T 10N, R 29E; SWSW, SEC 29; NWNW, SEC 32, T 10N R 30E, B.M.

The water is used from April 1 to November 1 to irrigate 960 acres within the W1/2NW, SENW, NESW, W1/2SE, SESE, SEC 11; SWSW, SEC 12; W1/2NW, NWSW, SEC 13; E1/2NE, SEC 14; SESE, SEC 24; NENE, SEC 25, T 10N, R 29E, B.M.; SWNW, W1/2SW, SESW, SWSE, SEC 19; SWSW, SEC 29; NE, N1/2NW, SENW, SEC 30; W1/2NE, N1/2NW, SENW, NESW, W1/2SE, SEC 32, T 10N, R 30E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted from the SENENW(LOT 3), SEC 5, T 9N, R 30E, (WAGONER DIVERSION) and used to irrigate 339 acres of land within the NESW, NWSW(LOT 6), SWSW(LOT 7), SESW, SWSE, SEC 4; SENE, E1/2SE, SEC 5; W1/2NE, NW, E1/2SW, W1/2SE, SEC 9, T 9N, R 30E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID, 83402, on or before MAY 6, 1991.

R. Keith Higginson
Director

Published in the TIMES-NEWS on APRIL 18 & 25, 1991.

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MAY 2 1991

09-Apr-1991

LEWISTON MORNING TRIBUNE
PO BOX 957
LEWISTON ID 83501

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before MAY 6, 1991.

Yours truly,

Rita Bodell
Secretary/Office Coordinator

Encl.

MICROFILMED

MAY 27 1991

Error

09-Apr-1991

POST REGISTER
PO BOX 1800
IDAHO FALLS ID 83403

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before MAY 6, 1991.

Yours truly,

Rita Bodell
Secretary/Office Coordinator

Encl.

O.P.
RB

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MAY 27 1991

Page 1 of 8STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**COPY**
Transfer No. 3827

AMENDED APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Feb 10 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

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. 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</u>	<u>05/10/1886</u>	<u>.8 cfs</u>	<u>Irrigation</u>	<u>04/01</u> to <u>11/01</u>
				to _____

2. Total amount of water being transferred 4.0 cubic feet per second and/or _____ acre-feet per annum.3. Source of water Birch Creek tributary to Sinks

4. 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>5</u>									<u>20</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>

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Total acres 339

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 ☒ No ☐ 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 _____

MICROFILMED

MAY 27 1998

COMA

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	

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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.

3827

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 cts

(cfs/ac-ft)
amount

(c/s/ac-11)

(CFS/AC-11)

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

[illegible]

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

[illegible]

Total acres

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (Don't if there is no change) but see accompanying amended application for transfer to transfer this portion to lands of B&W Enterprises, Inc. 1. amount .8 cfs for Irrigation purposes from 04/01 to 11/01

.8 cfs

irrigation

purposes from

04/01

10/11

amount—

— amount

—knows

for ~

purposes from

01—

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

[illegible]

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

[illegible]

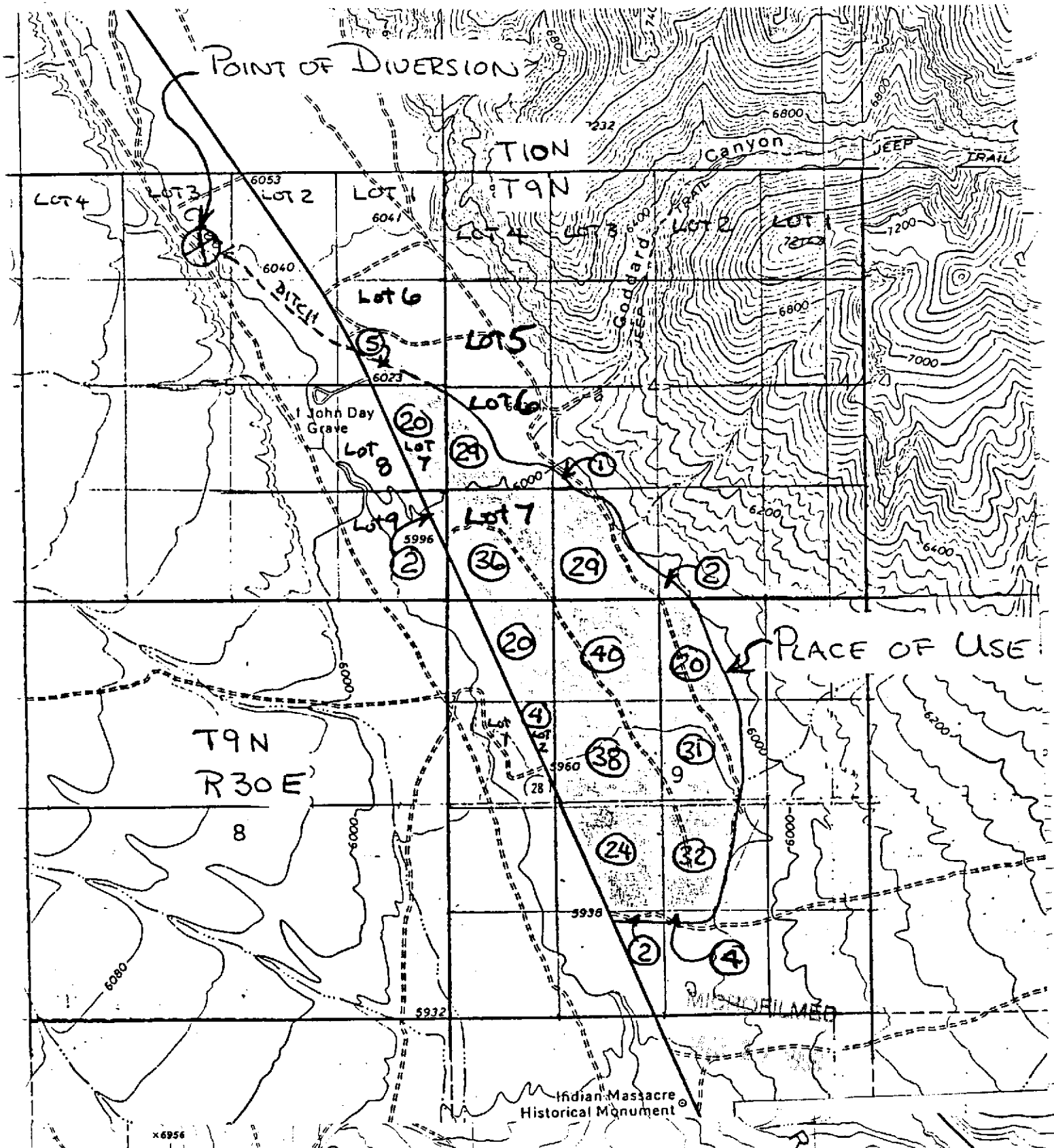
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0001	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465
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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

<u>New Nature of Use</u>	<u>Amount</u>	<u>Hours/days/year</u>	<u>Period of Use</u>
--------------------------	---------------	------------------------	----------------------

Amount
(c/s/ac-ft)

Hours/days/year

Period of Use

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 6 day of February

My commission expires 7-9-91

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by

505

Date _____

15-11-2

Protest filed by

Prelim. check by

Yes

३३५

50. $\frac{20}{xy}$

Received by **HR**

1505683

Date _____

2-12-91

Published in 57

5/24/20

Pub. dates 4-7

16-58; 81-1

Watermaster recommendation requested on

Recommended for

☐ approval ☐

denial

rec'd.

by

Copy of transfer sent to lien holder

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MAY 27 1999

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. (Sorensons) 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,

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APR 27 1988

ATTACHMENT NO. 1

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. Sorensens 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 Sorensens Water Right No. 32-0102 for 4.0 cfs with a priority date of May 10, 1889.

3. Sorensens 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.

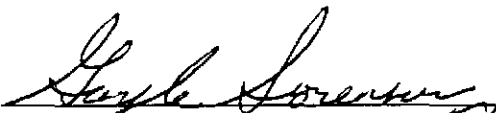
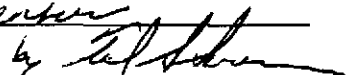
6. Sorensons agree that in addition to the irrigation water rights listed herein Wagoners will be entitled to divert up to 40 miner's inches (.8 cfs) of the water right which Sorensons will transfer to them which is Right No. 32-0067 for

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 Shenson

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	

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MAY 27 1988

ATTACHMENT NO. 2

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

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MAR 27 1983

ATTACHMENT NO. 3



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

April 12, 1990

L. Diane Emmons, Attorney
Farm Credit Services
P.O. Box TAF-C5
Spokane, Washington 99220-4005

RE: Birch Creek Ranches, Inc. Application to Transfer Rights No.
32-0069, 32-0092, 32-0062C, 32-0091, 32-0067, 32-0090,
32-0093, 32-0068, and 32-0089.

Dear Ms. Emmons:

This letter is a response to your letters of March 6, 1990, and March 13, 1990, to the department concerning the above referenced matter. As I indicated to you in a telephone conversation earlier today, the hearing to consider the protests against approval of the transfer applications is set for April 17 and 18, 1990, in Idaho Falls. In accordance with your request, you will be provided a copy of the decision when it is issued.

Also, as requested, I am enclosing a copy of the applicant's hearing brief.

Sincerely yours,


NORMAN C. YOUNG
Administrator

NCY:dc

Enclosure
Copy to all parties

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MAY 27 1990



Farm Credit Services

MAR 15 1990

Department of Water Resources
Eastern District Office

West 601 First Avenue
P.O. Box TAF-C5
Spokane, Washington 99220-4005
509/838-9300

March 13, 1990

Department of Water Resource
Eastern Idaho District Office
150 Shoup Avenue
Idaho Falls, ID 83401

Attention: Mr. Ronald Carlson

Re: In the Matter of the Application for Transfer of
Water Rights of:

✓32-0069

✓32-0092

32-0062C ← ?

✓32-0091

✓32-0067✓

✓32-0090✓

32-0093 ← ?

✓32-0068✓

✓32-0089✓

Applicant: Birch Creek Ranches, Inc.

Dear Mr. Carlson:

I would appreciate being advised of the decision made on the
above-referenced application when it is available. Thank
you.

Very truly yours,

L. Diane Emmons
Attorney

cc: Glen D. Leak, FCS-Idaho Falls

241-6-9840

MICROFILMED

MAY 27 1990



Farm Credit Services

See 30061 for mortgage
+ con.

West 601 First Avenue
P.O. Box TAF-C5
Spokane, Washington 99220-4005
509/838-9300

March 6, 1990

RECEIVED

MAR 8 - 1990

Department of Water Resources
Eastern District Office

Department of Water Resource
Eastern Idaho District Office
150 Shoup Avenue
Idaho Falls, ID 83401

Attention: Mr. Ronald Carlson

Re: In the Matter of the Application for Transfer of
Water Rights of:

32-0069
32-0092
~~32-0062C~~ 0061C
32-0091
32-0067
32-0090
32-0093
32-0068
32-0089

Applicant: Birch Creek Ranches, Inc.

Dear Mr. Carlson:

The above-referenced application involves decreed water rights which were appurtenant to the land mortgaged to the Federal Land Bank, predecessor in merger to the Farm Credit Bank of Spokane in 1974 and were passed through the mortgage to the bank, becoming a part of the security for a loan to G. Marshall Base and Margaret Base. Said water rights therefore become subject to the mortgage. Thompson on Real Property (1958), Section 4698 p. 181; Muckle v. Hill, 32 Idaho 661, 666, 187 p. 943 (1920). A copy of the mortgage is attached.

Because water is treated as real property and can be conveyed and transferred as other real property, it comes within the terms of the mortgage which sets forth the description of the property which is subject thereto. The language of the mortgage states on page two:

"including all leases, permits, licenses or privileges, written or otherwise, appurtenant or nonappurtenant to said mortgaged premises, now held by mortgagors or hereafter issued,

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extended or renewed to them by the United States or the State or any department, bureau, or agency thereof, which have been or will be assigned or waived to mortgagee."

The Bases transferred their property to a Mr. Simmons who subsequently transferred the property to the applicant herein. None of the transferees assumed the mortgage nor have the Bases been released from personal liability under the terms of the note and mortgage.

When an interest in real property, including the decreed water rights, is transferred, the transferee takes whatever property was appurtenant to and a hereditament of the mortgaged estate subject to the mortgage of the mortgagee, Federal Land Bank of Spokane. In such a case, "the transferee takes, in any case, subject to the rights of the mortgagee whose instrument has been duly recorded, or as to whose rights the transferee had, or should have had, knowledge." 3 Powell on Real Property Section 457 [3] p. 37-241 (Revised Edition 1987); Josslyn v. Daly, 15 Idaho 137, 96 p. 568 (1908). The Courts, in analyzing the term "subject to," have held that to take property subject to the mortgage means that the taker or transferee is burdened with the mortgage. In Del Rio Land Incorporated v. Haumont 514 p. 2d 1003 (1973).

It is evident that any water right appurtenant to the mortgaged property and held at the time of the mortgage are and continue to be the property "subject to" the mortgage. Therefore, even if the Department of Water Resources approves a transfer, the transfer or conveyance is "subject to" the mortgage of Federal Land Bank of Spokane and the mortgage is not extinguished by the transfer.

The procedure created in Idaho Code Section 42-208 and Section 42-222 to provide a place for hearing all protesting water users as to a planned change in point of diversion or place of use does not provide any basis for terminating the interest in the mortgage estate, appurtenances, hereditaments and rights. Such notice is ineffective in conveying away any rights so held. The statute does not purport to grant any power to the department to interfere or terminate such interests and rights. Therefore, though the transfer may be effective as against protesting water users, it does not divest the mortgagee of any right or interest in the water rights. Those rights continue to be subject to the mortgage.

Based on the foregoing, it is respectfully requested that the decreed water rights in which Farm Credit Bank has an interest not be transferred to an entity that has no obligation on

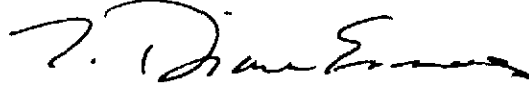
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MAR 7 1990

Department of Water Resource
March 6, 1990
Page 3

the mortgage. Such a transfer could be considered to be an impairment of collateral which could result in immediate foreclosure proceedings. Thank you for your consideration of this matter.

Very truly yours,



L. Diane Emmons
Attorney

cc: Alan E. Barber
Glen D. Leak, FCS-Idaho Falls

LDE:kc
241-6-9840

MICROFILMED

MAY 27 1995

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 355

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

FOR YOUR FILES

Name of applicant Birch Creek Ranches, Inc. Phone (208) 523-0620Post Office address Box 50130, Idaho Falls, Idaho 83405

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use☒ Change nature of use ☐ Change period of use ☐ Other _____2. Describe the reason for the proposed changes To transfer point of diversion and place of use.For more detail, please see the attachment.B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE CONTINUED ON PAGE 3

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
32-0067	9/10/1882	3.2 cfs	Irrigation	April 1 to Nov. 1
32-0090	5/10/1886	1.6 cfs	Irrigation	April 1 to Nov. 1
32-0093	5/10/1886	*1.6 cfs	Irrigation	April 1 to Nov. 1
32-0068	5/10/1887	3.2 cfs	Irrigation	April 1 to Nov. 1
32-0089	5/10/1888	2.5 cfs	Irrigation	April 1 to Nov. 1

2. Total amount of water being transferred 18.6 18.7 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Birch Creek tributary to Sinks

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	SW	34	9N	30E	Clark	

Department of Water Resources

5. 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	
8N	31E	12												40		40	40	40	160
8N	32E	10									40	40			40	40	40	40	240
		11							40	40	40	40	40	40					240
		14					40	40											80
		1													40			40	80
8N	33E	6									40					40	40		160

Total acres 960

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MAY 27 1999

Witness my hand this _____ day of _____, 19____

This is to certify that I have examined Application for Transfer of Water Rights No. _____, subject to the following limitations and conditions:
And said application is hereby _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

d. Remarks:

*.10 cfs of the combination of 32-0091, 32-0092 and 32-0093 is still appurtenant to the Blue Dome property and will not be transferred. See Transfer No. 2165.

Land will no longer be irrigated.

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

trust, mortgage or contract agreeing to the proposed changes.

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

channel to the power plant and thence into the lower portion of the old Reno Ditch.

Birch Creek at the point of diversion to divert water through the new lined power

a. Description of diversion system An earthen dam with a buried PVC liner has been placed in

6. General information:

PART 1

Transfer No. _____

Page 2 of 24

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of applicant Birch Creek Ranches, Inc. Phone _____

Post Office address _____

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes _____

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>32-0069</u>	<u>5/10/1888</u>	<u>*3.2 cfs</u>	<u>Irrigation</u>	<u>April 1</u>	<u>to Nov. 1</u>
<u>32-0092</u>	<u>5/10/1888</u>	<u>*2.5 cfs</u>	<u>Irrigation</u>	<u>April 1</u>	<u>to Nov. 1</u>
<u>32-0061C</u>	<u>5/10/1888</u>	<u>.4 cfs</u>	<u>Irrigation</u>	<u>April 1</u>	<u>to Nov. 1</u>
<u>32-0091</u>	<u>5/01/1901</u>	<u>*.5 cfs</u>	<u>Irrigation</u>	<u>April 1</u>	<u>to Nov. 1</u>

2. Total amount of water being transferred _____ cubic feet per second and/or _____ acre-feet per annum.

3. Source of water _____ tributary to _____

4. Point(s) of Diversion:

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

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	

Total acres _____

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MAY 27 1999

Witness my hand this _____ day of _____, 19____

This is to certify that I have examined Application for Transfer of Water Rights No. _____, subject to the following limitations and conditions:
And said application is hereby _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

d. Remarks:

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

trust, mortgage or contract agreeing to the proposed changes.

contracts? _____ Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or

a. Description of diversion system _____

6. General Information:

PART 1

Transfer No. _____

Page _____ of _____

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

3. 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	

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

3. 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	

Total acres _____

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

(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 September 6, 1922

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

Birch Creek

~~tributary to Sinks~~

4. Date or priority September 10, 1882

5. Water is used for the following purpose:

amount 3.2 cfs

purposes from

to NOV.

(CIS/BC-11)

(cfs/ac-ft)

(C/S/AC-11)

6. Total amount of water under right 3.2

Continued on Page 6

Lot	%	%	%	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	NE	NE 24	10N	29E	Clark	
		NE	SE	SE 24	10N	29E	Clark	
		SE	NE	NE 24	10N	29E	Clark	

8. Lands irrigated or place of use: _____
Continued on Page 6

Twp.	Rge.	Sec.	NE %						NW %						SW %						SE %					
			NE %	NW %	SW %	SE %	NE %	NW %	SW %	SE %	NE %	NW %	SW %	SE %	NE %	NW %	SW %	SE %	NE %	NW %	SW %	SE %	NE %	NW %	SW %	SE %
10N	29E	11						30	35	35	30				30							40	10	35		215
		12														35										35
		13							35	40					15											90
		14			35						20															55
		24																				25				25
		25			10																					10
Totals			NE %						NW %						SW %						SE %					

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, 32-0091.

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 _____ vs. _____
dated _____ in _____ county of _____
- 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. _____ 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 _____ tributary to _____

4. Date or priority _____

5. Water is used for the following purpose:

amount _____ for _____ purposes from _____ to _____
(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 _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

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

8. Lands irrigated or place of use: NE SW 11 10N 29E Clark

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	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

MICROFILMED

Total acres _____

9. Describe any other water rights used for the same purpose as described above _____

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

• If yes, describe

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED	C. AMOUNT OF RIGHT BEING TRANSFERRED	D. DATE OF TRANSFER

(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:

[illegible]

3. Lands irrigated or place of use:

[illegible]

Total acres

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

- | 1. | amount | for | purposes from | to |
|----|-------------|-----|---------------|----|
| | 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:

[illegible]

3. Lands irrigated or place of use:

[illegible]

666 7 MAY 27 1999
MICROFILMED

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 September 6, 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 May 10, 1886

5. Water is used for the following purpose:

amount 1.6 cfs for Irrigation purposes from April 1 to Nov. 1
(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 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
							SAME AS 32-0067	

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	

MICROFILMED

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?

ON

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 |
| | amount | for | purposes from | to |
| | amount | for | purposes from | to |
| | amount | for | purposes from | to |

2. Point(s) of Diversion:

[illegible]

3. Lands irrigated or place of use:

[illegible]

Total acres

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

- | 1. | amount | for | purposes from | to |
|----|-------------|-----|---------------|----|
| | amount | for | purposes from | to |
| | (cts/ac-ft) | | | |
| | amount | for | purposes from | to |
| | (cts/ac-ft) | | | |
| | amount | for | purposes from | to |
| | (cts/ac-ft) | | | |

2. Point(s) of Diversion:

[illegible]

3. Lands irrigated or place of use:

[illegible]**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. 32-0093 Decreed to Edward M. Kaufman
in case of Agnes B. Reno, et al. vs. J. R. Richards, et al.
dated September 6, 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 May 10, 1886

5. Water is used for the following purpose:

amount 1.6 cfs for irrigation purposes from April 1 to Nov. 1
(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 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
							SAME AS 32-0067	

8. 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	

MICROFILMED
MAY 27 1989

Total acres _____

9. Describe any other water rights used for the same purpose as described above 32-0067, 32-0090, 32-0068,
32-0089, 32-0069, 32-0092, 32-0061, 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?

ON

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

—**UNKNOWN**
(11-2P/812)

(cfs/ac-ft)

(c/s/ac-ft)

2. Point(s) of Diversion:

[illegible]

3. Lands irrigated or place of use:

[illegible]

Total acres

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

1. amount—

— 1000000
(11-22/212)

(cfs/ac-ft)

(cfs/ac-ft)

2. Point(s) of Diversion:

[illegible]

3. Lands irrigated or place of use:

[illegible]

MICROFILM

7-11-44

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. 32-0068 Decreed to Wood Livestock Co.
in case of Agnes B. Reno, et al. vs. J. R. Richards, et al.
dated September 6, 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 Sinks4. Date or priority May 10, 1887

5. Water is used for the following purpose:

amount 3.2 cfs for Irrigation purposes from April 1 to Nov. 1
(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 3.2 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
							SAME AS 32-0067	

8. 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	

MICROFILMED
10-3-77
27 1977

Total acres _____

9. Describe any other water rights used for the same purpose as described above 32-0067, 32-0090, 32-0093,
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	%	%	%	Sec.	Twp.	Rge.	NE 1/4	NW 1/4	SW 1/4	SE 1/4	Totals
Local name for diversion											
County											
3. Lands irrigated or place of use:											

Tw.	Rge.	Sec.	NE 1/4	NW 1/4	SW 1/4	SE 1/4	Totals
Local name for diversion							
County							
3. Lands irrigated or place of use:							

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	%	%	%	Sec.	Twp.	Rge.	County	Local name for diversion
3. Lands irrigated or place of use:								

3. Lands irrigated or place of use:

Tw.	Rge.	Sec.	NE 1/4	NW 1/4	SW 1/4	SE 1/4	Totals
Local name for diversion							
County							
3. Lands irrigated or place of use:							

MICROFILMED

MAY 27 1999

Total acres _____

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

3. 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	

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

3. 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	

Total acres _____

PART 2
(Attach one copy for each right)

1. Right evidenced by:

1. Right evidenced by:
- a. Decree No. 32-0089 Decreed to C. B. Watts
- in case of Agnes B. Reno, et al. vs. J. R. Richards, et al.
- dated September 6, 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 Stinks
4. Date or priority May 10, 1888
5. Water is used for the following purpose:
amount. 2.5 cfs for Irrigation purposes from April 1 to Nov. 1

5. Water is used for the following purpose:

6. Total amount of water under right _____ 2.5 _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

[illegible]

8. Lands irrigated or place of use:

[illegible]**Total acres**

9. Describe any other water rights used for the same purpose as described above
32-0067, 32-0090, 32-0093, 32-0068, 32-0069, 32-0092, 32-0061, and 32-0091.

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. 32-0069 Decreed to Wood Livestock Co.
in case of Agnes B. Reno, et al. vs. J. R. Richards, et al.
dated September 6, 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 May 10, 1888

5. Water is used for the following purpose:

amount 3.2 cfs for Irrigation purposes from April 1 to Nov. 1
(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 3.2 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
							SAME AS 32-0067	

8. 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	

Total acres _____

9. Describe any other water rights used for the same purpose as described above 32-0067, 32-0090, 32-0093,
32-0068, 32-0089, 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?

ON

If yes, describe

8. 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

—UNKNOWN
(14 SEP 1965)

(c/s/bc-h)

(4-22/91)

2. Point(s) of Diversion:

[illegible]

3. Lands irrigated or place of use:

[illegible]**Total Acres**

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

1. Amount

ប្រកាស
(១០ កក្កដា ២០១២)

(U-SC/SC-H)

(11-08/540)

2. Point(s) of Diversion:

[illegible]

3. Lands irrigated or place of use:

[illegible]**Total acres**

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

3. 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	

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

3. 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	

Total acres _____

MICROFILMED
 MAY 27 1988

APPLICATION FOR TRANSFER OF WATER RIGHT

(Attach one copy for each right)

1. Right evidenced by:

- 32-0068, 32-0089, 32-0069, 32-0061 and 32-0091

**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. 32-0061 Decreed to Jerome F. Reno
in case of Agnes B. Reno, et al. vs. J. R. Richards, et al.
dated September 6, 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. 256 and 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 May 10, 1888

5. Water is used for the following purpose:

amount .4 cfs for Irrigation purposes from April 1 to Nov. 1
(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 .4 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
							SAME AS 32-0067	

8. 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	

MICROFILMED
MAY 2 1983

Total acres _____

9. Describe any other water rights used for the same purpose as described above 32-0067, 32-0090, 32-0093,
32-0068, 32-0089, 32-0069, 32-0092, 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?

ON

It 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 | |
|-------------|--|--------|--|---------------|--|--------|--|
| (cts/ac-ft) | | amount | | (cts/ac-ft) | | amount | |
| | | for | | purposes from | | to | |
| | | for | | purposes from | | to | |
| | | for | | purposes from | | to | |

[illegible]

3. Lands irrigated or place of use:

[illegible]

Total Acres

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

- | | | | | |
|----|------------------------|-----|---------------|----|
| 1. | amount | for | purposes from | to |
| | (cts/ac-ft) | | | |
| | amount | for | purposes from | to |
| | (cts/ac-ft) | | | |
| | amount | for | purposes from | to |
| | (cts/ac-ft) | | | |
| 2. | Point(s) of Diversion: | | | |

[illegible]

3. Lands irrigated or place of use:

[illegible]

MAY 27 1999
MICROFILMED

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. 32-0091 Decreed to Edward M. Kaufman
in case of Agnes B. Reno, et al. vs. J. R. Richards, et al.
dated September 6, 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 Pase Creek ☐ Warranty Deed ☐ Other _____

3. Source of water Birch Creek tributary to Sinks Pase Creek

4. Date or priority May 1, 1901

5. Water is used for the following purpose:

amount .5 cfs for Irrigation purposes from April 1 to Nov. 1
(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 .5 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
							SAME AS 32-0067	

8. 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	

MICROFILMED
APR 22 1995

Total acres _____

9. Describe any other water rights used for the same purpose as described above 32-0067, 32-0090, 32-0093,
32-0068, 32-0089, 32-0069, 32-0092, and 32-0061.

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.**

A large grid of dashed lines, intended for drawing a map or indicating land sections, townships, and ranges. The grid consists of approximately 10 columns and 10 rows of dashed lines.

MICROFILMED
MAY 21 1965

MAY 27 1999
MICROFILMED

Copy of transfer sent to lien holder _____
rec'd. _____ by _____
Watermaster recommendation requested on _____
Recommended for ☐ approval ☐ denial _____
Pub. dates _____
Published in _____
Received by HWS E006948 Date 4-20-89
Prelim. check by _____ Fee \$5.00
Received by (11) Date 4-19-89
Transfer contains _____ pages and _____ attachments
Protest filed by _____
Copies of protest forwarded by _____
Hearing held by _____ Date _____

FOR DEPARTMENT USE ONLY

My commission expires 11-04-91
Subscribed and sworn to before me this 17th day of April, 1989
(Signature of Applicant) _____
(Notary Public) Robert E. Benton

I understand that any willful misrepresentations made in this application may result in voiding its approval.
of the original right. The information contained in this application is true to the best of my knowledge.
I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use

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

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

1. New Nature of Use _____ Amount (cfs/ac-ft) _____ Hours/days/year _____ Period of Use _____

B. CHANGES IN NATURE OF USE

PART 3

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.

MICROFILMED
MAY 27 1989

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.

RECEIVED
FEB 14 1983
FBI - ALBUQUERQUE

SIGNATURE

Applicant - William T. Simmons

Protestants - D & D Enterprises }
- Ben Wilding } Attorney George Petersen

No Problem { 32-0067 - 9-10-82 3.20

0090 - 5-10-86 1.60 ?

0093 - 5-10-86 1.60 ? Pass Creek

No Problem { 0068 - 5-10-87 3.20

No Problem { 0089 - 5-10-88 2.50

No Problem { 0069 - " 3.20

0092 - " 2.50 ? Pass Creek

— 0061 - " 1.60 $\frac{1}{2}$ Transferred - other $\frac{1}{2}$ used for losses in Ck.

0091 - 5-1-1901 0.50 ? Pass Creek

19.90

~~928~~ inches

- Applicant's presentation

~~160~~ inches

0061 Was $\frac{1}{2}$ used for delivery
0070 Perhaps was used for loss delivery instead of $\frac{1}{2}$ 0061

0091, 92, 93 Decree to Kaufman -

Decreed to land that can not be irrigated from Pass Creek
instead of Birch Creek -

Protestant claims no water used on Kaufman land for 25 years -

Irrigated
~~Protestants~~ Protestants would agree to 928 inches

995 inches
 less 5 inches to Blue Dome
 less 2 inches to Lone Pine
 988

less ⁶⁰ 80 inch Jerome Reno right — This is the problem right — has a portion been lost —
 908 inches belonging to Simmons

→ Possible Agreement ←

Adjust 0061 to ≡

⇒ 930 inches

→ 928 inches plus 2 inches to Lone Pine —

(15)

← Applicant agreed to amend Transfer to indicate 930 inches ^{18.60 cfs} to be transferred — The other 60 inches will be transferred to the D&D and Ben Wilding land.



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

October 13, 1977

RE: Application for Transfer No. 32-0067/etc.

Mr. William T. Simmons
Terreton,
Idaho 83450

Dear Mr. Simmons:

Enclosed please find a copy of the protest filed by George C. Peterson, Attorney at Law, in behalf of D & D Enterprises and Ben Wilding against the above referenced application. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. Legal counsel is not mandatory at any proceeding before the Department, although you may desire to employ an attorney in your behalf.

If we may be of any assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

Enclosure

cc: IDWR - State Office
Kent Foster, Attorney at Law



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

October 13, 1977

RE: Application for Transfer No. 32-0067/etc. WILLIAM T. SIMMONS

Mr. George Peterson
Attorney at Law
485 "E" Street
Idaho Falls, Idaho 83401

Dear Mr. Peterson:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted on behalf of D & D Enterprises, Inc. and Ben Wilding. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: Ben Wilding
D & D Enterprises

IDWR - State Office

BDF

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protest Against)
Approval of Application for Transfer)
No. 32-0067/0090/0089/0068/0069/0092/)
0061/0091 in the Name of WILLIAM T.)
SIMMONS)

NOTICE OF CONFERENCE
AND/OR HEARING

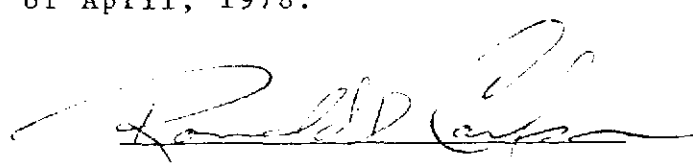
On September 8, 1977, William T. Simmons filed with the Department of Water Resources an application to transfer the water of the State of Idaho. On October 7, 1977, the Department received a protest against approval of said application from George C. Petersen, Attorney, in behalf of D & D Enterprises, Inc. and Ben Wilding.

The Department has set the matter of protest for conference and/or hearing for Tuesday, May 9, 1978, at 11:00 a.m., in the Conference Room, Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and arguments on all issues involved.

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or protestant may allow the Department without prejudice to dismiss the protest or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 12th day of April, 1978.



RONALD D. CARLSON
Supervisor, Eastern Region

RECEIVED

OCT 7 1977

Department of Water Resources
Eastern District Office

PROTEST TO APPLICATION FOR CHANGE
OF POINT OF DIVERSION

The undersigned, individually and jointly, hereby protest the granting of that certain application for a change of the point of diversion and place of use of the waters of Birch Creek filed by William T. Simmons, Terreton, Idaho, the subject of that certain Notice of Proposed Change of Water Rights recently published in the Standard-Journal, Rexburg, Idaho, on September 22, and September 29, 1977, a copy of said Notice of Proposed Change of Water Right is attached hereto, marked Exhibit "A" and made a part hereof.

WHEREAS, the requested change of point of diversion and place of use of the waters of Birch Creek have just recently come to the attention of the undersigned, and

WHEREAS, the undersigned parties have requested that their attorney and water engineer review and study the scope of said proposed changes the subject of Exhibit "A" and thereafter report their findings to the undersigned parties, and

WHEREAS, it would appear from a preliminary review and inspection of the published notice for change of point of diversion and place of use of the waters of Birch Creek the subject of Exhibit "A" is detrimental to and not in the best interests of the other water users of Birch Creek, and

WHEREAS, the undersigned, namely D & D Enterprises, Inc. and Ben Wilding, are substantial users of the water rights of Birch Creek, said use thereof and properties of said undersigned being situated to the south and down-stream from the use of those certain water rights the subject of Exhibit "A" attached hereto.

Based upon the facts as heretofore detailed, together with the understanding of said protestants hereinafter named to the effect that the proposed change in the point of diversion and place of use of the waters of Birch Creek the subject of

LAW OFFICES OF
PETERSEN, MOSS & OLSEN
485 "E" STREET
IDAHO FALLS, IDAHO 83401

RECEIVED

LAW OFFICES OF
PETERSEN, MOSS & OLSEN
485 "E" STREET
IDAHO FALLS, IDAHO 83401

Exhibit "A" attached hereto, are not in the best interests of the other water users of Birch Creek, and particularly the undersigned parties, said protestants hereinafter named hereby protest the granting of said requested change of point of diversion and place of use of the waters of Birch Creek, to William T. Simmons, the subject of Exhibit "A" attached hereto, on the grounds and for the following reasons:

1. That Protestants have just recently become aware of the request the subject of Exhibit "A", and thus have not had an opportunity to completely study the scope and effect of the proposed changes of William t. Simmons, the subject of his request to change the point of diversion and place of use of the waters of Birch Creek specifically described in Exhibit "A".

2. That protestants have not had an opportunity to receive from their counsel and water engineer a report and recommendation as to the request of William T. Simmons the subject of Exhibit "A" attached hereto.

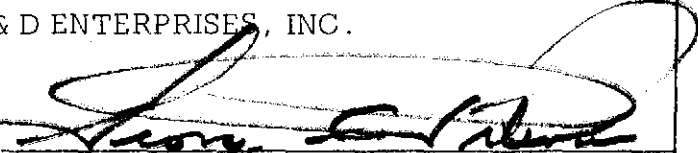
3. That the request the subject of Exhibit "A" attached hereto is not in accordance with and pursuant to the best interests and legal rights of the other water users of Birch Creek.

The undersigned parties hereby reserve the right to further amend their protest following receipt of the report and recommendation of their engineer and attorney.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year in this agreement first above written.

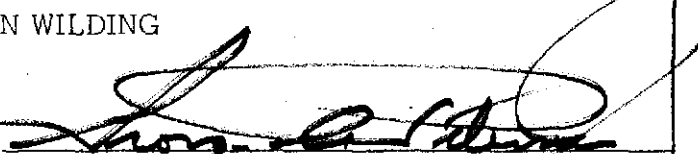
D & D ENTERPRISES, INC.

BY


George C. Petersen, Jr., Its Attorney
Current Water User of the Waters of Birch Creek

BEN WILDING

BY


George C. Petersen, Jr., His Attorney
Current Water User of the Waters of Birch Creek

**NOTICE OF PROPOSED
CHANGE OF WATER RIGHTS**

Notice is hereby given that William T. Simmons, Terreton, Idaho, has applied to the Department of Water Resources for a change in the points of diversion and place of use of the waters of Birch Creek. The rights sought to be changed are evidenced by decree to Jerome F. Reno Wood Livestock Co., C. B. Watts and Edward M. Kaufman in case of Agnes B. Reno, et al. vs. J. R. Richards, et al, dated Sept. 8, 1922, in Ninth District Court, County of Fremont and are recorded as follows:

The points of diversion are within the NW $\frac{1}{4}$ NE $\frac{1}{4}$, 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, B.M., Clark County (not given in decree but have historically been at the above locations.)

32-0087 — Amount: 3.20 cfs, Priority: 9-10-1882, Place of Use: Lots 2, 3, and 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 19, T. 10N, R. 30E;

32-0090 — Amount: 1.60 cfs, Priority: 5-10-1886, Place of Use: SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 32, T. 10N, R. 30E;

32-0089 — Amount: 2.50 cfs, Priority: 5-10-1888, Place of Use: SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 32, T. 10N, R. 30E;

32-0068 — Amount: 3.20 cfs, Priority: 5-10-1887, Place of Use: SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 19 NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 30, T. 10N, R. 30E;

32-0069 — Amount: 3.20 cfs, Priority: 5-10-1888, Place of Use: SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 24, T. 10N, R. 29E;

32-0092 — Amount: 2.50 cfs, Priority: 5-10-1888, Place of Use: W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 29, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 30, N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 32, T. 10N, R. 30E;

32-0061 — Amount: 1.60 cfs, Priority: 5-10-1888, Place of Use: SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 11,

SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 12, T. 10N, R. 29E;

32-0091 — Amount: 0.50 cfs, Priority: 5-01-1901, Place of Use: W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 29, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 30, N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 32, T. 10N, R. 30E;

32-0093 — Amount: 1.60 cfs, Priority: 5-10-1886, Place of Use: W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 29, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 30, N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 32, T. 10N, R. 30E.

These rights include 960 acres and a total diversion rate of 19.9 c.f.s.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 14, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 11, NW $\frac{1}{4}$ NE $\frac{1}{4}$, 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, B.M., Clark County, and used to irrigate lands within the W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 11, SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 12, W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 13, E $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 14, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 25, T. 10N, R. 29E, B.M.; SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 19, SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 29, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 30, W $\frac{1}{2}$ E $\frac{1}{2}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 32, T. 10N, R. 30E, B.M.

Any protest against approval of the above proposed change of water rights must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before October 10, 1977.

C. STEPHEN ALLRED
DIRECTOR

Published in the Standard Journal, Rexburg, Idaho, on September 22 and September 29.