

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

*ALSO MEMBER IL & WY BARS
**ALSO MEMBER MO BAR
***ALSO MEMBER CO BAR

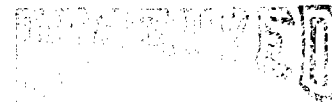
LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE
CHARTERED
CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE
AREA CODE 208
232-6101

FAX
208-232-6109

March 18, 1996

Gary Spackman, Manager
Water Rights Permit Section
Tim Luke, Senior Water Research Specialist
Idaho Department of Water Resources
1301 N. Orchard Street
Statehouse Mail
Boise, Idaho 83720



MAR 20 1996

Department of Water Resources
Eastern District Office

Re: *McCammon Ditch Company Petition - Water District No. 29*

Dear Gary and Tim:

Please be advised that I will be representing Portneuf-Marsh Valley Canal Company with respect to the Petition of McCammon Ditch Company for Enforcement of Decree and Order dated February 12, 1996.

I have obtained copies of the Petition and supporting Affidavit of Byron K. Allen with attached exhibits A through G. Please provide me with a copy of all other pleadings, notices, correspondence or other information relevant to this matter.

I am informed the Department is in the process of scheduling a conference or hearing and would appreciate it if available dates could be coordinated to avoid scheduling conflicts. A scheduling conference would appear appropriate to identify the issues, establish the Department's jurisdiction and authority for addressing the same, and determining the course of procedure. As I understand it, the Petition essentially seeks to enforce the terms of an order issued on October 5, 1990, by the Department pertaining to the installation of measuring devices on the Portneuf River and tributaries, the enforcement of which would appear appropriate for the Department to address. However, it is my understanding that the real objective of the Petition may be to address long-standing disputes among the decreed water right holders on the Portneuf regarding who is entitled to receive the benefit of net gain in the reach of the river from the Chesterfield Reservoir to the points of diversion of McCammon Ditch Company and Portneuf-Marsh Valley Canal Company, as well as who bears the shrink associated with the delivery of those water rights of Portneuf-Marsh Valley stored in the Chesterfield Reservoir.

Gary Spackman
Tim Luke
Page 2
March 18, 1996

As I am sure you are aware, pursuant to the Union Grain and Elevator Decree adjudicating the Portneuf River, the storage water right of Portneuf-Marsh Valley Canal Company was decreed to be delivered "free from loss from the reservoir to the point of diversion". My understanding is that the Department's records reflect that this storage water right has in fact been delivered free from loss continuously since the Chesterfield Reservoir was originally built in 1913. Furthermore, since the 1949 permit when the reservoir was raised an additional two feet, any additional waters have been delivered in the same manner since that time.

It appears obvious that any issues pertaining to the parties' water rights would not properly be before the Department in this proceeding, inasmuch as they are presently being adjudicated before Judge Hurlbutt in the Snake River Basin Adjudication.

If you have any questions or would like to discuss these matters further, please feel free to contact me.

Sincerely,



RANDALL C. BUDGE

RCB:rr

cc: Arlin G. Olson, Watermaster/District 29
IDW Eastern Region Office
Kay E. Christensen
Portneuf-Marsh Valley Canal Company