

# Memorandum

**To:** Glen Saxton  
**From:** Tim Luke *TJL*  
**Date:** October 1, 1998  
**Re:** Scheduling of Hearing for Creation of Birch Creek Water District

---

I held a public information meeting on September 18 in Downey concerning the request for a water district on Birch Creek, tributary to Marsh Creek in Basin 29. We received a request late last year to appoint a watermaster on Birch Creek. A similar petition was received several years ago but the petitioners apparently lost interest and did not help us in setting up a meeting at that time. Both petitions complained about increasing upstream home development and unauthorized irrigation of lawns etc. In response to last year's petition, I held a meeting this March that was limited to Birch Creek users only. That meeting reviewed the details of a water district but was more of an opportunity to discuss the problems and explore possible solutions. A major Birch Creek user, Malad Valley Irrigation Co. (Malad Valley), was not present at this first meeting because their water rights fail to list Birch Creek as a source and therefore no notice was sent to them by IDWR. The March meeting resulted in a general consensus among the users that a district should be created for Birch Creek. However, there were some unanswered questions about the Malad Valley diversion that I agreed to investigate.

Following the March meeting, I confirmed that Malad Valley's diversion from Birch Creek does not appear to be identified on any water rights on record with IDWR. Moreover, Malad Valley had no SRBA claims on record with us. I wrote a letter to Malad Valley and their attorney this summer regarding this omission. I also realized after the March meeting that Birch Creek is already within Water District 29-H, Marsh Creek and tributaries. This district was created many years ago but has always been inactive.

I decided late this summer to schedule a second meeting to gather input regarding creation of a separate district for Birch Creek versus activating the Marsh Creek Water District. We sent notice to all Marsh Creek and tributary right holders about the second meeting on September 18. We also sent notice to Malad Valley and their attorney.

About 35 people attended the September 18 meeting. There were no representatives or users from Malad Valley among the attendees. The input I received at this meeting can be summarized as follows:

1. Marsh Creek and other tributary right holders did not support the idea of activating Water District 29-H; users stated that there were no regulation problems in the other areas and that they saw no need for the district.
2. Birch Creek users again reiterated their concerns and desire for some type of regulation on Birch Creek. They supported the idea of having a district in place to address their regulation concerns but seemed somewhat indifferent about a separate district versus activation of District 29-H. They seemed to lean more towards having a separate district after hearing the lack of support for the larger district.

Given the input and response I received at the meeting, I recommend that IDWR proceed with holding a hearing to create a separate district. I had told the users that IDWR might schedule a hearing within the next 60 days or soon as possible. Several of the Birch Creek users were a little critical of my holding a second meeting and not responding more quickly to the petitions.

Please let me know how you want to proceed with this or if you need any assistance. Attached is a summary of a creek tour that I took after the September 18 meeting.

- 42-604 Rts Adjudicated?
- written petition need?
- where hold hearing? Downey, CA American 20 mi
- notice to marsh Cr people?
- mailing list for Birch Cr? number? - 20
- " " " marsh Cr? number
- Location of Birch Cr. County

Summary of Birch Creek Tour:

I toured Birch Creek after the meeting with several users. I found that there are only several main diversions on this creek. These include:

- a. Malad Valley ditch diversion
- b. Jones hydro-plant diversion which has its intake several miles above the Malad diversion; its discharge splits to the Malad diversion and Birch Creek (with the larger split going to Malad, (only a trickle of water was discharging from the plant on this date)
- c. Unnamed irrigation diversion ditch shared by a majority of the Birch Creek water right holders; this is perhaps a mile or so below the Malad diversion and power plant return discharge point.

It is important to note that I only saw about four homes with any significant amount of lawn irrigation. The users were not even certain if these homes had diversions from the creek and I could not confirm any such diversions without further investigation. I also observed that the Malad Valley diversion was large in relation to the amount of water left in the creek for downstream use. This diversion consisted of a splitter box in the creek that was designed to divert a majority of water to Malad Valley. There was little or no control on this structure other than some stop logs. The users were not aware of any specific quantity of water that Malad is entitled to other than to say that they thought there was an old gentleman's agreement that allowed Malad Valley to divert three-fourths of the creek flow.

I researched some Birch Creek Decrees and found an 1878 judgement that did split the creek three-fourths and one-fourth. No mention is made of where the water is used. This decree appears to have been superceded by other decrees. The rights in the latter decrees either do not list a place of use, or include places of use only within the Marsh Creek-Portneuf River drainage. There is a 1956 decree that appeals a State Engineer's decision granting an application to appropriate water for storage uses by Malad Valley Irrigating Co. This decree involves dispute of one-fourth of the water of Birch Creek and appears to acknowledge diversion of three-fourths of the creek to the Malad-Oneida drainage. The decree however does not describe ownership or other water right information associated with the three-fourths diversion. It is interesting to note that this 1956 decree did not also reference the other decrees that apparently superceded the 1878 decree.

Based on my tour, I feel that the main problem on the creek is the Malad Valley diversion and the lack of any water right that specifies what Malad is entitled to divert. Although the users do seem concerned about this diversion when asked about it, most of their overall focus is targeted at the newer home development and their unsubstantiated suspicions of unauthorized water use from Birch Creek.