



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

SKIP
WDD-6 1998

September 28, 1998

Grant Jones, President
Malad Valley Irrigation Company
2601 W 500 S
Malad, ID 83252

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RECEIVED

OCT 02 1998

Department of Water Resources
Eastern Region

Re: Diversion and Water Rights from Birch Creek

Dear Mr. Jones:

A second public information meeting was held in Downey on September 18, 1998 to discuss formation of a water district on Birch Creek (also known as Mill Creek), tributary to Marsh Creek. This second meeting was held in part because Malad Valley Irrigation Co. (Malad Valley) had not received notice of the first public meeting that was held last March. Malad Valley had not received notice of the first meeting since it has no recorded water rights that reference Birch Creek or other sources tributary to Marsh Creek. IDWR did send notice of this second meeting to you and your attorney, Randall Budge. I was disappointed that representatives from Malad Valley were not present at this meeting.

At the conclusion of the September 18 meeting, I made a brief tour of Birch Creek. As expected, I found little in the way of controlling head works and measuring devices. I also observed that a majority of Birch Creek was being diverted to Malad Valley's ditch. It is my personal opinion that this diversion is perhaps the real source of concern by the Birch Creek users as opposed to the stated concern about building of new homes and installation of unauthorized pumps to irrigate surrounding lawns. As stated in my last letter, IDWR is very uncertain as to what water rights, if any, authorize Malad Valley's diversion of water from Birch Creek. My earlier letter also advised Malad Valley to address this deficiency by filing a claim in the Snake River Basin Adjudication.

At the last meeting, there was again consensus that a water district be organized for Birch Creek. IDWR will probably hold a formal hearing within the next 60 days concerning creation of this district. You need to be aware that if a district is created this year, it will be operational next spring. **There is a real possibility that Malad Valley's Birch Creek diversion may be regulated next year and that measuring devices and head gates may be required of all Birch Creek diversions. Regulation could include a complete shut down of the Malad Valley ditch if questions about Malad Valley's water rights are not properly addressed.**

If you have questions or need assistance with filing claims I suggest you contact Howard Jones or staff at our Idaho Falls office. You may contact me directly at 327-7864 if you have questions regarding the formation of a water district. You and your attorney will receive notice of any upcoming hearing. I strongly urge that you or a representative of Malad Valley attend any scheduled hearing related to this matter.

Respectfully,

A handwritten signature in cursive script that reads "Tim Luke".

Tim Luke

Cc: Randall Budge
Harold Jones, IDWR
Dennis Phillips



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