



State of Idaho

DEPARTMENT OF WATER RESOURCES

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SOUTHERN REGION

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

February 21, 2003

Clint Muhlestein, Manager  
Oakley Canal Company  
PO Box 207  
Oakley, ID 83346

VIA FAX

RE: Delivery of Birch Creek water during the non-irrigation season

Dear Mr. Muhlestein:

As I understand from our phone conversation Wednesday you have been elected to serve as watermaster for Water District 45-B (Birch Creek). In checking our records I find that Water District 45-B has not yet sent in their minutes for the recent annual meeting when you were elected. As a consequence the department has not yet appointed you as watermaster and any regulation you make on the creek is not authorized and is not covered under the director's bond. I encourage you or the district's secretary to contact Jim Stanton of our office so that the proper paperwork can be completed.

Regarding your question about delivery of water to users on Birch Creek:

I have reviewed the Dayley vs. Dayley ("Dayley") decree dated 10/10/1903 where many of the senior rights on Birch Creek originate. This decree is vague in many respects. It does not list a season of use nor does it specify a use. Irrigation use may be inferred from the Findings of Fact of said decree. A review of the Snake River Basin Adjudication (SRBA) claims for the senior "Dayley" rights shows that the use claimed is generally irrigation. Most rights are claimed with a season of use from 4/1 to 10/31; however, a few claim a year round irrigation season.

I have also reviewed Oakley Canal Company's right 45-2063 for diversion of 100 cfs of Birch Creek. This license with a priority junior to those rights defined in the "Dayley" decree is also vague in that it has no season of use specified and it describes the use as irrigation and domestic purposes. The Engineer's Report for this license confirms the diversion is through the "Birch Creek Feeder Ditch" where it is delivered to storage in Oakley Reservoir for irrigation under the Oakley Canal Co. system. In reviewing the SRBA claim for this Birch Creek use, I find that it is incorporated with other licensed rights in claim 45-12442 where it is claimed for year round irrigation storage.

I have discussed your particular question with Phil Rassier, deputy attorney general, about how the Oakley Canal Co. right would be regulated verses the "Dayley" rights prior to the normal irrigation season. It is Mr. Rassier's opinion that water diverted under

any right must be put to beneficial use and if for irrigation it must be within the irrigation season. It is questionable that diversion onto lands early in the year is beneficial. It is recognized by the department that for your area the standard irrigation season is from 3/15 to 11/15. The issue of season of use is addressed by the Department's Administrative Memorandum "Water Delivery No. 2" dated June 18, 1992 (Copy attached).

In drafting recommendations to SRBA claims the department has in the past and will continue to use the standard irrigation season, even for those claiming a year round irrigation season. However, the department will consider in certain circumstances recommending a customized season of use as outlined in the December 18, 1998 memorandum from Peter Anderson to Dave Tuthill (Copy attached). The department generally recommends a year round season of use for storage rights.

In summary the "Dayley" irrigation rights should be delivered with a season of 3/15 to 11/15 as outlined in the 6/18/1992 memo until such time as the issue of a customized season of use is resolved through the SRBA process.

If you have further questions please feel free to contact this office.

Sincerely,



Allen Merritt, PE  
Southern Region Manager

CC: Phil Rassier  
Norm Young, Tim Luke, Jim Stanton – IDWR Water Management  
Dave Tuthill, Doug Jones – IDWR SRBA