



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

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Department of Water Resources
Eastern Region

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

March 20, 1996

Kent Foster
Attorney at Law
P.O. Box 50130
Idaho Falls, ID 83405

Breck Barton
Attorney at Law
P.O. Box 100
Rexburg, ID 83440

Blair Grover
Attorney at Law
P.O. Box 36
Rigby, ID 83442-0036

George Petersen
Attorney at Law
485 "E" Street
Idaho Falls, ID 83402

Jim DeMordaunt
D & D Enterprises
P.O. Box 5
Rexburg, ID 83440

Re: Proposed test of Birch Creek Flows

Gentlemen:

I received Kent Foster's letter on February 21, 1996 which requested authorization by the Department of Water Resources to conduct two tests of stream flow loss in Birch Creek, one before the irrigation season and one during the irrigation season. As I understand the proposed tests, Birch Creek Ranches will attempt to determine how much additional water Birch Creek will lose if water from the Simmons Ranch rights now owned by Birch Creek Ranches is delivered to a proposed place of use below Birch Creek Ranches' hydropower facility.

In response to Kent Foster's letter, Jim DeMordaunt of D & D Enterprises wrote me a letter on February 25, 1996, objecting to the proposed tests. I assumed a copy of his letter was mailed to the parties. After recently reviewing the files, I discovered it had not. Enclosed is a copy of DeMordaunt's letter.

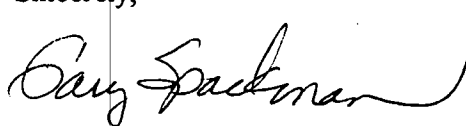
In 1995, Ron Carlson, the manager of the Department's Eastern Regional Office, sent a letter describing when and under what conditions the test could be performed. Enclosed is a copy of Ron Carlson's letter. I don't believe the letter needs any further elaboration except that the irrigation season begins in the Birch Creek vicinity on April 15. A test conducted prior to April

Kent Foster
Blair Grover
Breck Barton
George Petersen
Jim DeMordaunt
March 20, 1996
Page 2

15 is outside the irrigation season and can be conducted without the consent of the waterusers. A test conducted during the irrigation season will require the consent of the waterusers.

Please be advised that Department authorization for the test pursuant to Ron Carlson's letter should not be construed as support for assessment of only incremental losses to Birch Creek Ranches if a transfer of the Simmons rights is approved. In fact, the Department has consistently supported a proportional loss assessment. Nonetheless, the test may be helpful to determine the total loss in Birch Creek for purposes of assigning the prorata share of the loss to each user.

Sincerely,



Gary Spackman

c. Don Shenton
Eastern Region