

**IRCH CREEK RANCHES, INC.**

5203 South 11th East  
Idaho Falls, Idaho 83404  
(208) 529-2469

June 16, 1994

COPY  
**RECEIVED**  
JUN 21 1994

Mr. Donald W. Shenton  
Water Master, Water District 32-D  
P.O. Box 33  
Dubois, ID 83423

Department of Water Resources  
Eastern District Office

Dear Mr. Shenton:

This letter is written pursuant to your recent undated letter received by myself on June 14, 1994. Before we begin, let me give you our bottom line.

1. No diversions will take place unless you are notified in writing by us.
2. No diversions will take place without your authorization.
3. Weirs will be installed. We will notify you in writing when they are installed. You may review them for adequacy.

I disagree with your assertions of irresponsibility on our part. Let me respond to the points you raised.

You raised the issue that we turn the water out when we want. The water being turned out is to irrigate two small pastures. One pasture is approximately 11 acres and the other is approximately five acres. These pastures are used by Bill Simmons who is renting the ranch for the ranch horses and crippled and orphaned livestock. This practice has gone on since the spring of 1989. This is the sixth irrigation season that it has gone on. The practice began by an agreement between yourself and Mr. Bill Simmons in which I was not involved.

This situation went on in 1989, 1990, 1991, and 1992. In 1993 you called me. Bill indicated that his agreement with you was that he would turn the water on these small pastures and then turn it off within one or two days. For the most part Bill has complied with this. Sometimes when he has had a change of ranch hands, he has trouble getting communication down to the hired help. Whenever he is reminded, he honors the agreement.

The first time that you mentioned to me that you needed notification when the water was turned on and the first time you mentioned the possibility of the need for weirs was last summer in 1993. I told you at the conclusion of that telephone conversation that I would call Bill Simmons and have him get in touch with you to make arrangements. This I did. You indicated to Bill Simmons that a weir needed to be installed. Bill then called me to let me know that he was going to put a weir in and asked if he could

borrow my backhoe. Apparently, there was a mix-up and the water got turned on without a weir. For this we apologize and it won't happen again. However, neither Bill Simmons nor myself acted irresponsibly.

You assert that my water assessments have not been paid in your letter. This is false. My water assessments are currently paid in full. The check was mailed May 11, 1994.

You assert that you told me a year ago that you needed to know when diversions were to take place. I have no recollection of this and I do not believe it to be true. However, if you require us to notify you of them as stated above, we will notify you.

You assert that this diversion damages the adjustment on the Wagoner's weir. I disagree totally. The amount of water diverted (about two to three cfs out of 70 to 74 cfs) is less than the daily or diurnal variation in the creek. The creek naturally goes up and down every day more than the amount of water diverted. If this small variation in flow affects Wagoner's weir, how are we assured that he is not diverting too much water due to the daily variation?

You assert that there is a markable adjustment and disruption to the D & D and Newman flow. Again, I disagree because the amount of water diverted upstream was less than the diurnal variation of the creek.

You suggest that the Idaho code on controlled measuring devices states who has authority to divert water from the streams of the state under a water district. I am going to rely upon you for what it says. In response to your suggestion that we read the Idaho Code, if the above described course of action is not suitable, please let us know.

You assert that the ditch between the Lone Pine was flowing water May 21 and was not shut off until June 6 or 7. This was correct. Bill has a new ranch hand on the place, Mr. Shane Mickelson. When I found out the water was running I suggested to Bill that it probably had been running too long. Bill immediately had the water shut off. Bill informed me that there is a weir in this ditch. I request that you inspect this weir and see if it is suitable for your needs.

You assert that it has been happening for some time. Yes, it has been happening for some time. It has been happening some time with you concurrence. It is only in this past year that you have changed your mind about how it should happen. I told you that the diversions of water would be very minor to irrigate these two small pastures approximately 100 to 150 inches for two or three days. That's what I have stated to you. I at no time said that they were very temporary and only for one year.

In conclusion, Mr. Shenton, we will comply with the water laws. We

expect from you equal and fair treatment. In my opinion, your handling of the current situation is a reaction caused by my voting against your election as the Water Master for this year. That is my right. I have concluded in my own mind that you do not treat everyone fairly and the same in terms of water on Birch Creek.

If our course of action described in the first paragraph concerning the water is not acceptable, please let me know in writing.

Very truly yours,



Ted S. Sorenson  
Birch Creek Ranches, Inc.

cc: IDWR/Idaho Falls  
IDWR/Boise  
Bill Simmons  
Birch Creek Water Users