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Of counsel

February 23, 1998

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FEB 24 1998

Department of Water Resources
Eastern Region

Ronald Carlson
Regional Manager
Idaho State Department of Water Resources
900 N. Skyline Drive
Idaho Falls, ID 83402

Re: D&D Enterprises, Inc. and LaVar Newman:
In the Matter of Application for Delivery
of Certain Water Rights at their Current
Assigned Point of Diversion, together with
an Order Directing Watermaster for
Delivery of Same

Dear Mr. Carlson:

On September 29, 1997, I filed with the Department of Water Resources an application entitled in part "In the Matter of Application for Delivery of Certain Water Rights at their Current Assigned Point of Diversion, together with an Order Directing Watermaster for Delivery of Same" The gist of said petition was: (1) The legal point of diversion for the Birch Creek water rights of D&D Enterprises, Inc. and LaVar Newman has always been where the Old Reno Ditch leaves Birch Creek (in NW 1/4 SE 1/4 of Sec 3 T3N R30 EBM). (2) Although there have been numerous applications by Birch Creek Ranches, etc. dealing with Birch Creek water, the above legal point of diversion for D&D and Newman's water has never been changed. (3) Birch Creek Ranches/Ted Sorenson have been diverting essentially all of Birch Creek through a new Reno Ditch to their hydropower plant, such new point of diversion being contrary to the legal point of diversion of D&D and Newman's water. (4) D&D and Newman desire to have this illegal point of diversion discontinued and to have their Birch Creek water rights diverted at the legally designated point of diversion, the Old Reno Ditch.

When I originally attempted to file the above application with the Department, I was told that no such application was required and that D&D and Newman simply needed to direct the watermaster, Don Shenton, to divert their water at the legal point of diversion. In fact, my attempt to pay the filing fee for the application was originally resisted because there was no need for such filing. However, the application and fee were eventually accepted.

February 23, 1998

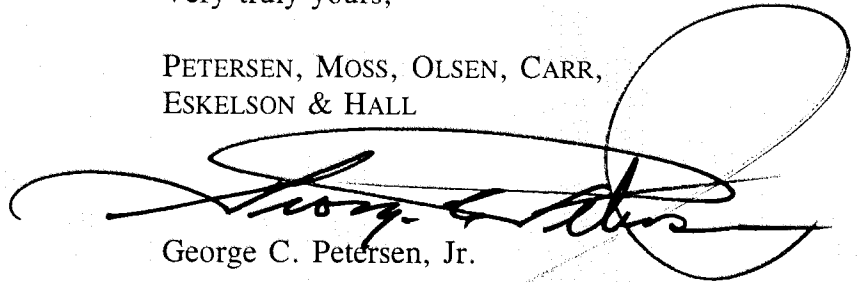
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It is my understanding that the Department has yet to advertise the application. It is also my understanding it is the Department's position that inasmuch as the legal point of diversion for D&D and Newman's water rights in Birch Creek has never been changed, all D&D and Newman need to do in order to have their Birch Creek water delivered to the Old Reno Ditch, is to inform the watermaster that such is their desire. (Of course, such a delivery would require that this water be allowed to flow down Birch Creek from the "power pond" instead of being diverted into the new Reno Ditch and hydropower plant.)

When the irrigation season begins in April, it is the intent of D&D and Newman to direct the watermaster to deliver their water at the Old Reno Ditch point of diversion as soon as provision for such delivery can be made. If such a delivery is contrary to the position of the Department on this matter, I would appreciate being so informed as soon as possible.

Very truly yours,

PETERSEN, MOSS, OLSEN, CARR,
ESKELSON & HALL



George C. Petersen, Jr.

GCP/plm

cc: Blair Grover
Kent Foster
Breck Barton