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MAR 10 1998

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Department of Water Resources

March 6, 1998

Mr. Ronald D. Carlson
Regional Manager
IDAHO DEPARTMENT OF
WATER RESOURCES
900 North Skyline Drive
Idaho Falls, ID 83402

Re: Application of D&D Enterprises, Inc. and LaVar Newman filed about September 29, 1997 and letter of George Peterson to Ronald D. Carlson dated February 23, 1998

Dear Mr. Carlson:

We are in receipt of a copy of Mr. Peterson's letter to you of February 23, 1998, and have been asked to express some concerns of Mr. Ted Sorenson. We also received a copy of an application from Mr. Peterson's office of September 30, 1997, but it was not readily apparent to us what procedural process it might initiate. Since it was prepared during the time of our hearing on protests of D&D Enterprises and LaVar Newman to an application for transfer of Mr. Sorenson's company, Birch Creek Ranches, Inc., we assumed it's purpose was to gain leverage in the litigation. Perhaps the threat of damage to the power production of Mr. Sorenson's power plant is still the underlying intent, but some preliminary questions that come to our mind include:

1. When permits nos. 32-07128 and 32-07136 were applied for in 1982 and 1983, did anyone seriously believe that, if granted, the points of diversion for all of the D&D rights and Newman (then Wilding) rights would not be changed to the new point of diversion?

2. Is the formal granting of those permits, and the affirmation by the district court, not tantamount to, indeed a legally binding, change in point of diversion for all of the D&D and Newman rights in Birch Creek?

3. With the construction of the diversion pond, hydro-canal, power plant, mitigation ponds and attendant facilities, the continued diversion of all of the waters of Birch Creek at the new

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point of diversion, the continued operation of the power plant for 11 or 12 years in reliance upon the issuance of said permits, and the acceptance of the new point of diversion by D&D and Newmans with no objection, are there not substantial issues of estoppel, laches, waiver, etc. with respect both to the State of Idaho and the private water users?

4. Would the proposed cessation of diversions of Birch Creek water to the power plant and the resulting impacts on power production not result in expensive and protracted litigation against the state and the private water users for such things as temporary restraining orders, injunctions, and damages?

5. Because of the legally accomplished change in point of diversion claimed by D&D and Newman in their SRBA claims for the D&D and Newman water rights in Birch Creek, what will the director's report find and recommend in the pending SRBA proceeding with respect to such changes in point of diversion?

There are undoubtedly other legal and perhaps factual questions which might be precipitated by the pending application and the stated objective of D&D and LaVar Newman. We would very much appreciate being kept apprised of any action taken by IDWR. Specifically, we request that if some sort of notice is published, a courtesy copy be furnished to our office, if possible, before publication begins.

Thank you for your kind consideration of these comments.

Yours very truly,



Kent W. Foster

c. Mr. Norman C. Young
Ted Sorenson
George Peterson
Blair Grover
Breck Barton