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MOORE SMITH BUXTON & TURCKE, CHARTERED
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Boise, ID 83702-5716
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Attorneys for the Ark Properties, LLC and Mayfield Townsite, LLC

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF PERMIT NO. 63-12447	)	
IN THE NAME OF ARK PROPERTIES, LLC	)	PETITION FOR
AND MAYFIELD TOWNSITE, LLC	)	RECONSIDERATION OF
	)	PRELIMINARY ORDER ISSUING
	)	LICENSE 63-12447
_____	)	
	)	

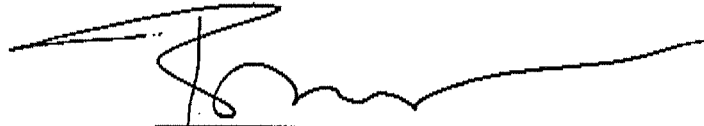
COMES NOW Ark Properties, LLC and Mayfield Townsite, LLC pursuant to I.C. 67-5243 et. seq. and petitions the Idaho Department of Water Resources for reconsideration of the Preliminary order issuing License 63-12447.

Pursuant to the Preliminary Order issued August 1, 2012, the License limits the place of use to only a specific 200 acres within the permissible place of use approved in Permit 63-12447. See attached Permit to Appropriate Water No. 63-12447 Conditions of Approval and Remarks; March 24, 1999 letter from Shelley W. Keen to Applicants' predecessor in interest; and January 31, 2012 e-mail message from Cherie Palmer to Lori Graves. The Applicants believe the development of the permit was entirely consistent with the conditions imposed on the permit which authorized a permissible place of use.

Imposition of new conditions on the permit after its issuance denies the Applicants the right to appropriate water pursuant to Idaho statutes and the state Constitution. Oral argument (or a meeting with the Department) is requested.

Submitted this 15 day of August 2012.

MOORE SMITH BUXTON & TURCKE,
CHARTERED

A handwritten signature in black ink, appearing to read 'Bruce M. Smith', is written over a horizontal line.

BRUCE M. SMITH
Attorney for the Ark Properties, LLC and
Mayfield Townsite, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of August 2012, a true and correct copy of the foregoing document was served upon the following by the method indicated below:

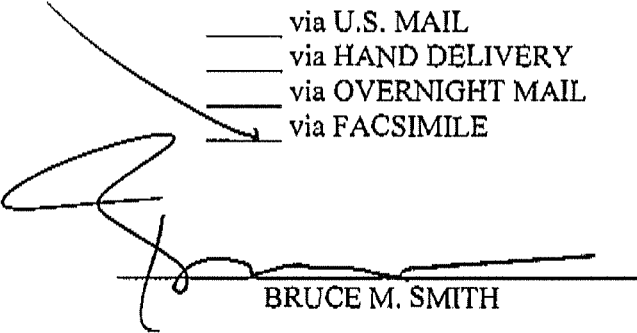
Ark Properties, LLC
C/O John Mcallum
11204 N Bar 21 Dr
Glenns Ferry, Id 83623-5003

Mayfield Townsite, LLC
P.O. Box 1359
Caldwell, Id 83606

SPF Water Engineering, LLC
300 E. Mallard Dr Ste 350
Boise, Id 83706
Att: Scott King

Idaho Department of Water
Resources
205 N. 10th Street, Suite 530
Boise, ID 83702-5773
Att: Shelley W. Keen

☐ via U.S. MAIL
☐ via HAND DELIVERY
☐ via OVERNIGHT MAIL
☒ via FACSIMILE


BRUCE M. SMITH



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNORKARL J. DREHER
DIRECTOR

March 24, 1999

SAND SPRINGS RANCH & CO
PO BOX 399
FAIRFIELD ID 83327-0399

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 63-12447

Dear Permit Holder:

The Department of Water Resources (IDWR) has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a preliminary order issued by IDWR pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by IDWR unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a "Proof Due Notice" approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this right were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Groundwater Protection Section located here at this office or our regional office nearest you.

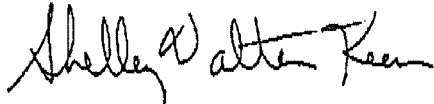
Also, please note that water right owners are required to report any change of water right ownership and/or change of mailing address to the department within 120 days of the change. Failure

APR 13 1999

to report these changes could result in a \$100 late filing fee. Contact any office of the department or visit the department's homepage on the Internet to obtain the proper reporting form.

If you have any questions, please call me at 208-327-7946.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shelley W. Keen".

Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosures

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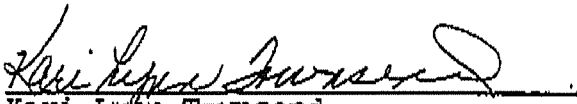
APR 13 1993

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of March, 1999, I mailed
a true and correct copy, postage prepaid, of the foregoing
PRELIMINARY ORDER (Approved Permit) to the person(s) listed below:

Water Right No. 63-12447

SAND SPRINGS RANCH & CO
PO BOX 399
FAIRFIELD ID 83327-0399


Kari Lynn Townsend
Secretary

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APR 13 1999

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 63-12447

Proposed Priority: April 28, 1998

Maximum Diversion Rate:

4.00 CFS

This is to certify, that SAND SPRINGS RANCH & CO

PO BOX 399

FAIRFIELD ID 83327-0399

has applied for a permit to appropriate water from: GROUNDWATER

and a permit is APPROVED for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
IRRIGATION	03/15 to 11/15	4.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

SWNE , Sec. 24, Township 01N, Range 04E

NWSW , Sec. 24, Township 01N, Range 04E

SWSW , Sec. 24, Township 01N, Range 04E

SESE , Sec. 24, Township 01N, Range 04E

Lot 2 (SWNW), Sec. 19, Township 01N, Range 05E

ELMORE County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC	ACRES	ACRES	ACRES	TOTAL
01N	04E	24	NENE 30.0	NWNE 20.0	SWNE 40.0	
			SENE 40.0	NESW 40.0	NWSW 30.0	
			SWSW 30.0	SESW 30.0	NESE 40.0	
			NWSE 40.0	SWSE 20.0	SESE 20.0	380.0
05E	18	Lot 4 (SWSW)	10.0	SESW 30.0	NESE 30.0	
			NWSE 10.0	SWSE 30.0	SESE 10.0	120.0
	19		NENE 40.0	NWNE 40.0	SWNE 40.0	
			SENE 40.0	NENW 40.0	Lot 1 (NWNW) 40.0	
		Lot 2 (SWNW)	40.0	SENW 40.0	NESW 20.0	
		Lot 3 (NWSW)	20.0	Lot 4 (SWSW) 20.0	SESW 20.0	
			NESE 20.0	NWSE 20.0	SWSE 20.0	480.0
			SESE 20.0			

Total number of acres irrigated: 980.0

CONDITIONS OF APPROVAL AND REMARKS

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before March 1, 2004.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.

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PAGE 2

State of Idaho
Department of Water Resources**Permit To Appropriate Water**

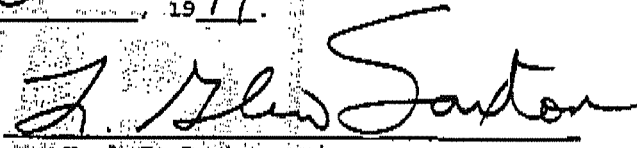
NO. 63-12447

CONDITIONS OF APPROVAL AND REMARKS

4. After specific notification by the department, the right holder shall install a suitable measuring device or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
6. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary for this purpose will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
7. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code, any any specific well construction requirements of the drilling permit.
8. This right is limited to the irrigation of 200 acres within the place of use described above in a single irrigation season.
9. Water bearing zone to be is between 400 and 1000 feet.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.
Witness the signature of the Director, affixed at Boise, this

10 th day of March, 1999.


for
Karl J. Dreher, Director

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APR 14 1999

Palmer, Cherie

From: Palmer, Cherie
Sent: Tuesday, January 31, 2012 4:41 PM
To: 'Lori Graves'
Subject: 63-12447 ARK Properties

Hi Lori,

I got your check and amendment in the mail today, thank you for working on this. I see that the amendment that I sent out originally is not the copy that landed in my in-box. We decided not to allow a PPU for this right because there is no evidence that water is available for acres other than the 200 acres that are authorized. I have attached my licensing memo for your review and the POU that will be licensed under this right. If there is evidence that supports a 1,284 acre PPU that has been irrigated at any time during the development period, we can take another look at licensing this right. Otherwise, I would need to have the originally amendment sent to the department for licensure. Thanks and let me know if you have any questions.



63-12447.jpg

Licensing Memo
63-12447.docx

Cherie

2/1/2012

Scott King of SPF called today to understand where we made the decision described in this email.

I referred him to §42-219(1) and 35.01.g in the rules. I told him that they can send in the original amendment I sent them, which would override the other amendment, or we would deny the amendment they submitted by order. He will let me know what his clients decide.

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

BANNER BANK BUILDING
950 W. BANNOCK STREET, SUITE 520, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

FACSIMILE COVER SHEET

DATE: August 15 2012 Recipient's Fax: 208-722-5139
TO: IDWR att: Sheri Client: Ark Properties, LLC
Mayfield Townsite, LLC
FROM: Bruce Smith/Ellen Smith
RE: Petition for Reconsideration of Preliminary Order Issuing License 63-12447 - 9 pages
Notice of Appearance - 2 pages
TOTAL PAGES: 23

☒ Original will not be sent
☐ Original will be sent by first class mail
☐ Original will be sent by federal express

ADDITIONAL COMMENTS:

***** IMPORTANT MESSAGE *****

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.