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SEP 19 2005

Department of Water Resources

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

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POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
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SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

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JOHN A. BAILEY, JR.
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BRENT O. ROCHE
KIRK B. HADLEY
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CONRAD J. AIKEN
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IDAHO FALLS OFFICE

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*ALSO MEMBER WY & IL BARS
**ALSO MEMBER UT BAR
†ALSO MEMBER D. C. BAR
††ALSO MEMBER MO BAR
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September 15, 2005

Brian Patton
Cynthia Bridge-Clark
Water Allocation Bureau
Idaho Department of Water Resources
322 E. Front Street
Boise, Idaho 83702

Re: *Sam's Hollow Water Company*
Application to Lease a Water Right to the Water Supply Bank

Dear Cynthia and Brian:

I am submitting on behalf of Sam's Hollow Water Company acting for and on behalf of Fish Haven Water Users Company, the enclosed Application to Sell or Lease Water to the Water Supply Bank with multiple attachments. This Application is being submitted to comply with Condition 7(b) of the Approval of Permit Nos. 11-07481 and 11-07491 attached to the Application. To comply with Condition 7(a), we are simultaneously filing an Application for Transfer of Water Right sent to Eastern Region of IDWR, copy of which is attached. We are also simultaneously submitting a Water Management and Operations Plan for Mitigation-Revised, and Operations Manual for Sam's Hollow Water Company to Gary Spackman to comply with Conditions 4, 5 and 6,

It would be greatly appreciated if review and approval of all three of these submissions could be expedited. If you have any questions, please contact me.

Brian Patton
Cynthia Bridge-Clark
September 15, 2005
Page 2

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall C. Budge". The signature is written in a cursive, flowing style.

RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Gary Spackman (w/encls.)

RECEIVED

SEP 19 2005

Department of Water Resources

Transfer No. 72318

Page 1 of 9

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

of Fish Haven Water Users

208-232-6101

435-946-3221

Name of applicant Sam's Hollow Water Co., acting on behalf Phone 435-946-3221
25111 S. Rd. PO Box 1201, Panguitch, UT 83204

Name of applicant %Randall C. Budge, PO Box 1391, Pocatello, ID 83204

Post Office address %Doug Johnson, Pres., 206 N. Bear Lake Blvd., Garden City UT 84028

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☒ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes To add mitigation as an authorized use for a portion of Fish Haven Water Users Co. Right No. 11-4022 based on Applicant's 140.5 shares (10.95%) which will be used for mitigation of ground water depletion to Bear Lake as required by Permit Nos. 11-7481 and 11-7491.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

- | 1. Right Number | Priority | Amount
(cfs/ac-ft) | Nature
of Use | Period of Use |
|-------------------|-------------------|-----------------------|-------------------|--|
| <u>11-4022</u> | <u>5/18/1871</u> | <u>3.24 cfs**</u> | <u>Mitigation</u> | <u>4/05</u> to <u>11/02</u> |
| <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> to <u> </u> |
| <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> to <u> </u> |
| <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> to <u> </u> |

2. Total amount of water being transferred 3.24 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Fish Haven Creek tributary to Bear River

4. Point(s) of Diversion: ****140.5 shares (10.95%) of right. See attached Map of Points of Diversion**

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	NE	16	16S	43E	Bear Lake	Fish Haven Upper North Ditch
		NE	NW	15	16S	43E	Bear Lake	Fish Haven #1 North Ditches
		NE	NW	15	16S	43E	Bear Lake	Fish Haven #2 South Ditch
		SE	NW	15	16S	43E	Bear Lake	Upper South Ditch

5. Lands irrigated or place of use:

[illegible]

Total acres

PART 1**6. General Information:**

a. Description of diversion system Diversion structures, measuring devices, ditches, pipelines (see attached map)

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? X Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
Some land will be taken out of irrigation over time as development occurs on the subdivision. The dried up acres effect mitigation for the consumptive use of Applicant's ground water wells pumped under Permit Nos. 11-07481 and 11-07491.

d. Remarks: See attached copies of Permit Nos. 11-7481, 11-7491, Agreement with Fish Haven Water Users Co. dated 3/14/2002 & IDWR Director Dreher letter dated 8/24/2004. PermitCondition 7 requires this transfer recognizing the change in use to mitigation. The Agreement and Director's letter authorize and direct this Transfer Application be filed by Applicant.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____.

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2**

Transfer No. _____
Receipt No. _____

Current Water Right No. 11-4022

Priority Date: 05/18/1871

Origin: Water Right

Basis: Statutory Claim

Status: Active

Source: FISH HAVEN CREEK

Tributary to: BEAR LAKE

Source: SPRING

Tributary to: FISH HAVEN CREEK

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Volume</u>	<u>Subuse Code</u>
IRRIGATION	04/15 11/02	29.60 CFS		
	Total Diversion	29.60 CFS		

Source and Point(s) of Diversion:

FISH HAVEN CREEK	NWSW	16S 43E	14	BEAR LAKE
FISH HAVEN CREEK	SWNE	16S 43E	15	BEAR LAKE
FISH HAVEN CREEK	NENWSE	16S 43E	15	BEAR LAKE
FISH HAVEN CREEK	NWSENE	16S 43E	16	BEAR LAKE
FISH HAVEN CREEK	SWNWNE	16S 43E	16	BEAR LAKE
SPRING	SWNWNE	16S 43E	16	BEAR LAKE

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S 43E 35			15.0	5.0					3.0			8.0	23.0	33.0	20.0	20.0	127.0
16S 43E 2	7.0	5.0	20.0	7.0									27.0			28.0	94.0
16S 43E 10													37.0	40.0	18.0		95.0
16S 43E 11		16.0	9.0		10.0		9.0	6.0	40.0		35.0		5.0	4.0			134.0
16S 43E 14		10.0	15.0		40.0	30.0	36.0	31.0	40.0	40.0	18.0	13.0	3.0				276.0
16S 43E 22	40.0	40.0	40.0	30.0	40.0	13.0	17.0	22.0	10.0	20.0	24.0	15.0	18.0	26.0	38.0	5.0	398.0
16S 43E 23						20.0											20.0
16S 43E 27	13.0	15.0	7.0	10.0		17.0	6.0										68.0

Total Acres: 1212

Page 2

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2**

Transfer No. _____

Receipt No. _____

Current Water Right No. 11-4022

Conditions/Remarks:

Documentation of Ownership of the Current Place of Use

Is this property subject to any liens, deeds of trust, mortgages, or contracts or other encumbrances?

Describe the affect on the current place of use for this water right if the place of use is changed pursuant to this transfer

To your knowledge, has any portion of the water right undergone a period of five(5) or more consecutive years of non-use?

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. 11-4022 on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. check appropriate box below.

☐ Tax notice ☐ Warranty Deed ☐ Other _____

3. Source of water Fish Haven Creek tributary to Bear River

4. Date of priority 5/18/1871

5. Water is used for the following purpose:

Amount 29.6 cfs for Irrigation purposes from 4-15 to 11-02
(cfs/ac-ft)
Amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
Amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 29.6 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion
								See attached

8. Lands irrigated or place of use: See Attached

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres 1212

9. Describe any other water rights used for the same purpose as described above _____

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(if the entire right is to be changed by the applicant, omit part B and C)

1. Amount 3.24 for _____ purposes from 4-15 to 11-02
 (cfs/ac-ft)
 Amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 Amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. Amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 Amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 Amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

- Outline phase 1 ship
- Well ship
- Pod ship
- Ditch ship
- Phase 2 ship
- Section ship
- Ship



JOHNSON DEVELOPMENT

PHASE I

AERIAL PHOTO 2000

BROCKWAY ENGINEERING, PLLC.

ALR July 9, 2003

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

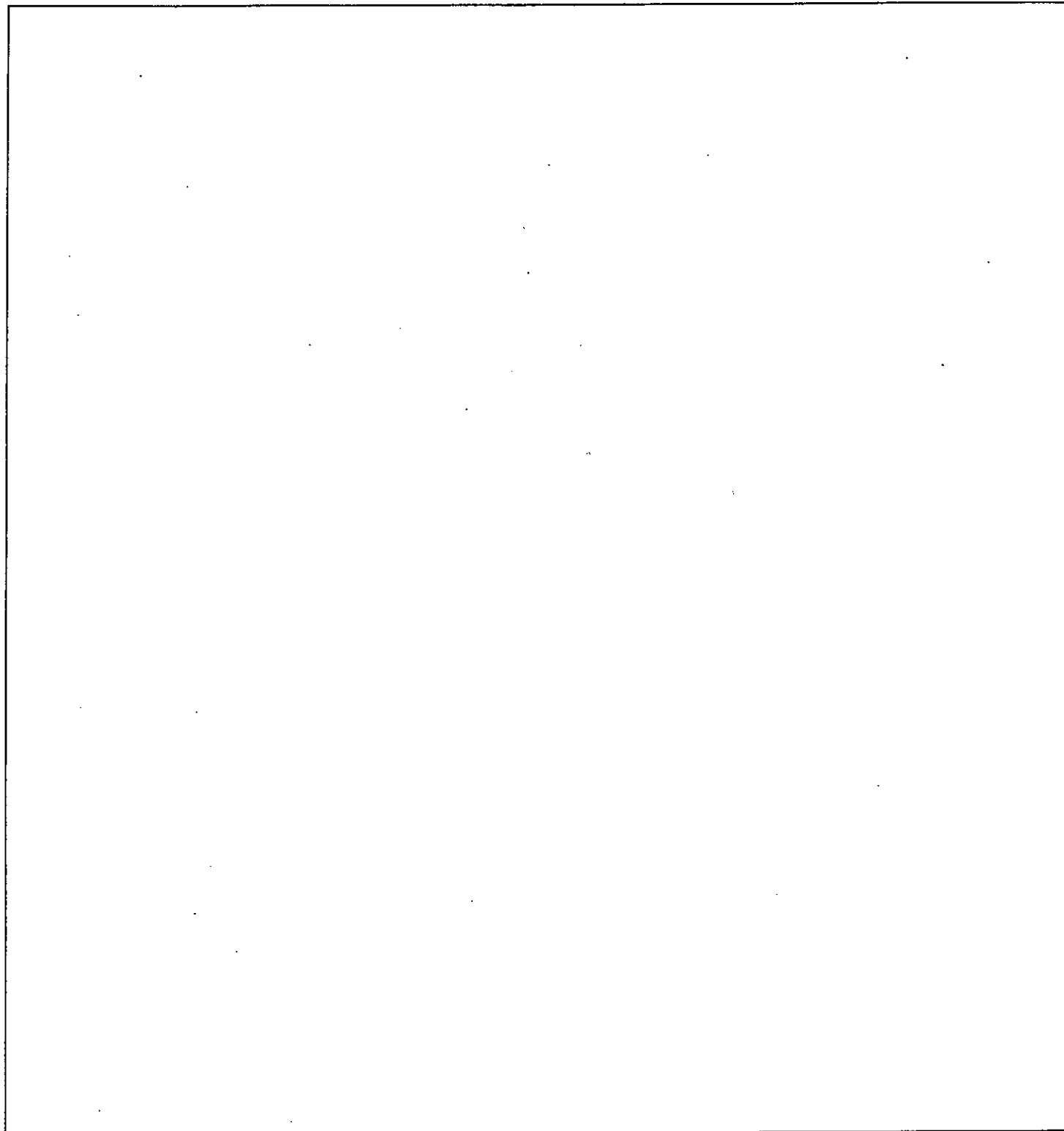
A. Draw a map or attach a

USGS map indicating the new

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.



SCALE: 2 inches equals 1 mile. Draw plan in ink.

PART 3**B. CHANGES IN NATURE OF USE**

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
	Mitigation	3.24	as needed	4/05 to 11/02
				to _____

2. Quantity and quality of return flows and location of discharge:

Some or all of the available discharge through the 3 Fish Haven ditches will be returned to Bear Lake as mitigation for ground water use. See WR 11-7481, 11-7491

3. Describe effects on other water uses resulting from the proposed change: Areas irrigated by Applicant will be reduced (see 11-7481, 11-7491) as necessary. The purpose of the transfer is to add mitigation as a nature of use to Sam's Hollow's shares of Fish Have Water Users Company as necessary for mitigation for ground water use on the subdivision. See 3/14/2002 Agreement & Director Dreher 8/24/04 letter.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

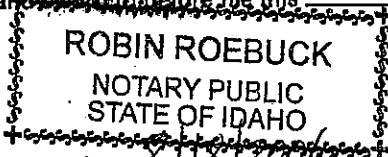
I understand that any willful misrepresentations made in this application may result in voiding its approval.

Sam's Hollow Water Company

By Randall C. Budget

Randall C. Budget (Signature of Applicant) Attorney

Subscribed and sworn to before me this 15th day of September, 192005.



Robin Roebuck

(Notary Public)

My commission expires 8/18/2006

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by _____ Date _____ Protest filed by _____

Prelim. check by _____ Fee _____

Receipted by _____ Date _____

Published in _____ Copies of protest forwarded by _____

Pub. dates _____ Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 11-07481

Priority: November 08, 2001

Maximum Diversion Rate: 1.35 CFS

This is to certify, that **SAMS HOLLOW WATER CO**
201 E CENTER ST
POCATELLO ID 83201

has applied for a permit to appropriate water from:

Source: GROUND WATER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
DOMESTIC	01/01 to 12/31	1.33 CFS
COMMERCIAL	01/01 to 12/31	0.02 CFS

LOCATION OF POINTS OF DIVERSION:

GROUND WATER	SE $\frac{1}{4}$ SW $\frac{1}{4}$	Sec. 11, Twp 16S, Rge 43E, B.M., BEAR LAKE County
GROUND WATER	SW $\frac{1}{4}$ SE $\frac{1}{4}$	Sec. 10, Twp 16S, Rge 43E, B.M., BEAR LAKE County
GROUND WATER	NW $\frac{1}{4}$ NE $\frac{1}{4}$	Sec. 15, Twp 16S, Rge 43E, B.M., BEAR LAKE County

PLACE OF USE: DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16S 43E 10															X	X	
16S 43E 11										X	X				X		
16S 43E 14			X														
16S 43E 15	X	X	X	X													

PLACE OF USE: COMMERCIAL

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16S 43E 11															X		
16S 43E 14			X														

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2009**.
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 the permit holder had no control.

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

NO. 11-07481

4. Prior to diversion of water under this right and prior to construction of any additional wells a water management and operation plan for Sams Hollow and any successor must be submitted in writing and approved in writing by IDWR. The water management and operation plan shall contain the following components: (a) a description of a method for forecasting flows in Fish Haven Creek using measured Fish Haven Creek data or data from a comparable basin; (b) a fixed date each year, no later than April 1, when the volume of water to be diverted under this right during the upcoming year is declared and the forecasted streamflows will be compared to projected water use within the subdivision and; (c) a description of curtailment or other water conservation measures that will be employed in times of mitigation water shortages, and how water users will be notified prior to May 1 about restricted water use in the year of predicted shortage; (d) a description of how the curtailment and conservation measures will be monitored and enforced; (e) a description of the entire flow path of mitigation water, including ditches, pipes, culverts, control structures, and how the system will operate, beginning at the diversion from the Upper North Ditch, the #1 North Ditch, and the #3 North Ditch, and ending at the discharge to Bear Lake; (f) a specific description and the location of each measuring device and how each measuring device will be installed and maintained; (g) a description of the frequency of measuring, comparing, and reporting; (h) a list of those to whom the reports will be submitted; (i) the identity of the specific officer, by title, in the association or corporate organization, that will be responsible for the oversight of system operation; and (j) an alternate plan for mitigation water or curtailment should statutory claim no. 11-4022 ever be curtailed by the watermaster of the Bear River. In addition, the water management and operation plan shall also contain an operations manual for the benefit of employees working for Sams Hollow that describes duties relative to operation, monitoring, and reporting.
5. The water management and operation plan must incorporate the components of the Settlement Agreement with PacifiCorp, dated October 7, 2003, related to water delivery, measurement, reporting, and retirement of irrigated acreage as the Bear Lake Haven Subdivision develops.
6. The provisions of the water management and operation plan will be incorporated as conditions of the permit to appropriate water. Failure of the permit holder to adhere to the provisions of the water management and operation plan, including having an active and available officer of the association assigned to oversee the water management and operations plan, is cause for IDWR to issue a notice of violation and/or cease and desist order to the permit holder, and to cancel the permit to appropriate water. The provisions of the water management and operation plan may be amended without amending the water right permit under Idaho Code § 42-211, but all changes must be approved in writing by IDWR.
7. The use of water diverted by Fish Haven Water Users Company under water right no. 11-4022 for mitigation purposes must be represented by (a) an approved transfer recognizing the change in nature of use from irrigation to mitigation, or (b) an approved lease of a portion of water right no. 11-4022 to the Idaho Water Supply Bank for mitigation purposes. Diversion and use for mitigation without written approval by IDWR will be an illegal diversion of water.
8. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 11.
9. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
10. The irrigation occurring under this domestic use shall not exceed $\frac{1}{2}$ acre within each platted subdivision lot upon which a home has been constructed. Alternatively, an owner of property may divert and use no more than 0.04 cfs and 2,500 gallons per day for all uses he may make on all property he may own in the subdivision. This right does not provide for irrigation of common areas.

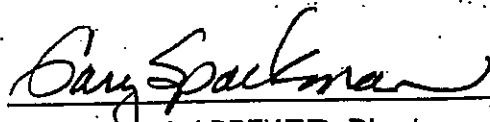
State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 11-07481

11. Domestic use is for 63 homes, 256 condominium units, and 4 commercial units under water right no. 11-7481, and 241 homes under water right no. 11-7491.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 7th day of September, 2004.



KARL J DREHER, Director



State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 11-07491

Priority: January 11, 2002

Maximum Diversion Rate: 1.22 CFS

This is to certify, that SAMS HOLLOW WATER CO
201 E CENTER ST
POCATELLO ID 83201

has applied for a permit to appropriate water from:

Source: GROUND WATER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
DOMESTIC	01/01 to 12/31	1.22 CFS

LOCATION OF POINTS OF DIVERSION:

GROUND WATER	SW $\frac{1}{4}$ NE $\frac{1}{4}$	Sec. 10, Twp 16S, Rge 43E, B.M., BEAR LAKE County
GROUND WATER	NW $\frac{1}{4}$ SW $\frac{1}{4}$	Sec. 2, Twp 16S, Rge 43E, B.M., BEAR LAKE County
GROUND WATER	NW $\frac{1}{4}$ NW $\frac{1}{4}$	Sec. 11, Twp 16S, Rge 43E, B.M., BEAR LAKE County

PLACE OF USE: DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16S 43E 2									X	X	X	X		X			
16S 43E 10	X	X	X	X													
16S 43E 11			X	X	X	X											

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2009**.
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 the permit holder had no control.
4. Prior to diversion of water under this right and prior to construction of any additional wells a water management and operation plan for Sams Hollow and any successor must be submitted in writing and approved in writing by IDWR. The water management and operation plan shall contain the following components: (a) a description of a method for forecasting flows in Fish Haven Creek using measured Fish Haven Creek data or data from a comparable basin; (b) a fixed date each year, no later than April 1, when the volume of water to be diverted under this right during the upcoming year is declared and the forecasted streamflows will be compared to projected water use within the subdivision and; (c) a description of curtailment or other water conservation measures that will be employed in times of mitigation water shortages, and how water users will be notified prior to May 1 about restricted water use in the year of predicted shortage; (d) a description of how the curtailment and conservation measures will be monitored and enforced; (e) a description of the

State of Idaho
Department of Water Resources

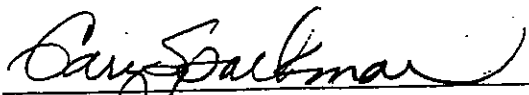
Permit to Appropriate Water

NO. 11-07491

entire flow path of mitigation water, including ditches, pipes, culverts, control structures, and how the system will operate, beginning at the diversion from the Upper North Ditch, the #1 North Ditch, and the #3 North Ditch, and ending at the discharge to Bear Lake; (f) a specific description and the location of each measuring device and how each measuring device will be installed and maintained; (g) a description of the frequency of measuring, comparing, and reporting; (h) a list of those to whom the reports will be submitted; (i) the identity of the specific officer, by title, in the association or corporate organization, that will be responsible for the oversight of system operation; and (j) an alternate plan for mitigation water or curtailment should statutory claim no. 11-4022 ever be curtailed by the watermaster of the Bear River. In addition, the water management and operation plan shall also contain an operations manual for the benefit of employees working for Sams Hollow that describes duties relative to operation, monitoring, and reporting.

5. The water management and operation plan must incorporate the components of the Settlement Agreement with PacifiCorp, dated October 7, 2003, related to water delivery, measurement, reporting, and retirement of irrigated acreage as the Bear Lake Haven Subdivision develops.
6. The provisions of the water management and operation plan will be incorporated as conditions of the permit to appropriate water. Failure of the permit holder to adhere to the provisions of the water management and operation plan, including having an active and available officer of the association assigned to oversee the water management and operations plan, is cause for IDWR to issue a notice of violation and/or cease and desist order to the permit holder, and to cancel the permit to appropriate water. The provisions of the water management and operation plan may be amended without amending the water right permit under Idaho Code §.42-211, but all changes must be approved in writing by IDWR.
7. The use of water diverted by Fish Haven Water Users Company under water right no. 11-4022 for mitigation purposes must be represented by (a) an approved transfer recognizing the change in nature of use from irrigation to mitigation, or (b) an approved lease of a portion of water right no. 11-4022 to the Idaho Water Supply Bank for mitigation purposes. Diversion and use for mitigation without written approval by IDWR will be an illegal diversion of water.
8. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 11.
9. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
10. The irrigation occurring under this domestic use shall not exceed $\frac{1}{2}$ acre within each platted subdivision lot upon which a home has been constructed. Alternatively, an owner of property may divert and use no more than 0.04 cfs and 2,500 gallons per day for all uses he may make on all property he may own in the subdivision. This right does not provide for irrigation of common areas.
11. Domestic use is for 63 homes, 256 condominium units, and 4 commercial units under water right no. 11-7481, and 241 homes under water right no. 11-7491.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 7th day of September, 2004.


KARL J DREHER, Director

AGREEMENT

THIS AGREEMENT is entered into as of the 11th day of March, 2002, by and among the FISH HAVEN WATER USERS COMPANY, an Idaho corporation (the "Company"), SAM'S HOLLOW WATER COMPANY, an Idaho corporation ("Developer") and C. HOWARD JOHNSON ("Johnson").

RECITALS

A. The Company is a corporation organized for the purpose of, among other things, distributing irrigation water to the shareholders of the Company for their use and benefit.

B. The Company is the owner of certain water rights in Fish Haven Creek (water claim No. 11-04022) and water distribution facilities used to provide water to its shareholders for irrigation use near Fish Haven in Bear Lake County, Idaho.

C. During the authorized irrigation season, the Company delivers irrigation water to its shareholders through five ditches known as the Upper South Ditch and Ditch No. 2 for use south of Fish Haven Creek, and the Upper North Ditch, Ditch No. 1 and Ditch No. 3 for use north of Fish Haven Creek. Water is received through these ditches by the Company's shareholders on a rotational basis, with shareholders taking irrigation turns in accordance with Company policies and sharing proportionately in times of water shortage. The amount of water each shareholder is entitled to receive is based on the number of shares owned by that shareholder. However, because of fluctuations in water availability, no individual shareholder is entitled to any specified amount of water nor is any shareholder assured of the receipt of any specific amount of water. The water claim is owned by the Company and shareholders have only a right to use a proportionate amount of the water authorized by that water claim. No change in ownership of the Company's water claim, or any part of it, is contemplated or authorized by this Agreement.

D. Developer intends to construct a residential and commercial development project (the "Project") on lands now irrigated by a shareholder of the Company, namely Johnson. The Project requires not only irrigation water but culinary water as well. Developer desires to drill and use, at Developer's sole expense, one or more wells to obtain culinary water for use in the Project. The Idaho Department of Water Resources ("IDWR") will not allow such wells to be used without adequate replacement of the groundwater from existing water rights. Developer desires to use the existing shares of Johnson and the water usable in connection with those shares, to provide the necessary replacement or mitigation water.

E. Johnson own the following shares of stock (the "Shares"), on which this Agreement is based and to which this Agreement shall be limited, which Shares allow receipt of irrigation water through the ditches indicated below:

<u>Owner</u>	<u>Upper North</u>	<u>Ditch No. 1</u>	<u>Ditch No. 3</u>	<u>Total</u>
Johnson	99.5	20	21	140.5

F. The Company is willing to facilitate Developer's Project as provided herein, but only on the terms and conditions set forth herein and only with the understanding and agreement that this Agreement shall be strictly construed to accomplish the following intended objectives: that the Company shall not incur any additional expenses, shall not incur any additional burdens, and shall not incur any additional liabilities as a result of this Agreement that in any

way exceed any expenses, burdens and liabilities that would exist without having entered into this Agreement. Stated differently, it is the parties' intention that any and all new expenses, burdens and liabilities resulting from or arising out of this Agreement will be paid and satisfied by Developer rather than the Company.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants hereafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company, Developer and Johnson, incorporating herein the Recitals set forth above, agree as follows:

1. Use of Shares for Groundwater Mitigation. The Company consents to Developer's use of the Shares to meet such mitigation or replacement requirements as may be imposed by the IDWR in connection with the Project, subject to the various provisions of this Agreement and the following conditions:

a. All water used by Developer, and any water used by Johnson, shall be allocated from, and only from, the Shares.

b. Developer shall only be entitled to receive water in the ordinary course of irrigation water delivery by the Company in accordance with the Company's customary operating practices, meaning that Developer will be entitled to water only at various times and in various quantities based on such factors as the rotational use by all shareholders, water availability and operational problems or limitations that may occur from time to time.

c. The Company shall not be obligated to provide any fixed quantity or amount of water to Developer, to provide water at any particular time or schedule (except in accordance with its normal and customary rotational use policies and practices), or to provide any particular quality of water. In times of drought, whenever the Company's facilities may be inoperable, or whenever else normal irrigation water deliveries to shareholders are not operationally or economically feasible, Developer's water entitlement shall be restricted, limited or curtailed in the same manner as other shareholders of the Company are restricted, limited or curtailed.

2. Usage of Water

a. Developer shall, at its sole expense, install a totalizing meter on each of its wells in order to accurately measure the amount of groundwater used in connection with the Project. Developer shall provide usage figures to the Company on an annual basis, and the Company may inspect such meters at any time.

b. Developer shall be entitled to receive and use annually only that amount of irrigation water corresponding to the amount of irrigation water Johnson would be entitled to receive and use from the Shares without regard to the existence of this Agreement, and Developer shall be solely responsible for complying with any usage limitations and approval conditions imposed by the IDWR or any other regulating entity. In particular, Developer shall be solely responsible for any requirements to install a pipeline or ditch for the delivery of mitigation water to Bear Lake, for any operation and maintenance of such facilities, for any monitoring or measuring of groundwater use, for any monitoring or measuring of surface flows in any of the Company's ditches or facilities, for any records or documentation that must be prepared, compiled, submitted or maintained, and for any and all other obligations that may arise in connection with Developer's use of water relative to the Project. The Company may monitor water flows in its ditches as it sees fit, but shall be under no obligation to do so and shall be under no obligation to provide Developer or anyone else with measurement data.

c. Developer shall be solely responsible for regulating any replacement or mitigation flows and for keeping the related facilities in a safe condition, including during times of flood and other emergencies. Except as necessary to take water from the Company's ditches as provided herein or to avert imminent danger to persons or property, Developer shall not have any right to regulate flows in the Company's ditches, nor shall Developer interfere with the Company's water that may be in the ditches. Except as specifically provided herein, Developer shall not adjust, alter or damage any headgates, turnouts, weirs, flumes, valves, culverts, bridges or other structures owned or used by the Company.

d. In no event shall the Company be required to deliver water or make water available for use anywhere outside the boundaries of its historical operating area or anywhere outside the legally established place of use of the Company's water claim. Developer shall not use any of the Company's water anywhere outside the boundaries of the Company's historical operating area or anywhere outside the legally established place of use of the Company's water claim except to provide required mitigation or replacement water to Bear Lake.

3. Delivery of Water. Irrigation water shall be delivered to Developer through the Company's existing ditches at the usual and ordinary delivery points in accordance with the Company's normal operating practices, and the Company shall be under no obligation to make any special or unique arrangements for the delivery of water to Developer or to the Project. It shall be Developer's sole responsibility to cause adequate mitigation water to be transported to Bear Lake, if so required. Likewise, it shall be Developer's sole responsibility to distribute irrigation water for use in connection with the Project.

4. Improvements by Developer

a. Developer shall construct, operate and maintain at its sole expense all wells, pipelines, ditches and other facilities necessary for the Project, and the Company shall have no obligation whatsoever with respect to such facilities.

b. As additional consideration for this Agreement, Developer shall purchase and cause to be installed at its sole expense by no later than April 15, 2002 three flumes. The flumes shall be of a type and size approved in advance by the Company, and shall be installed under the direction of a licensed engineer and a Company representative. The flumes shall be of sufficient size and shall be properly installed so as not to restrict water flows. The flumes shall be installed at such locations as the Company specifies. All engineering and construction fees shall be paid by Developer. All engineering and construction activities shall be performed in a good and workmanlike manner and shall comply with all applicable federal, state and local laws, regulations and codes. All construction shall be coordinated and scheduled in advance with the Company. Chuck Brockway, a licensed engineer who has assisted Developer with the Project thus far, may serve as said engineer, but in the event the Company becomes dissatisfied for any reason with the performance of Mr. Brockway, the Company may retain its own chosen engineer and all engineering fees incurred by the Company shall be reimbursed by Developer within 30 days after request by the Company. The Company shall pay for ordinary repair and maintenance of the flumes, but Developer shall pay to correct any installation errors or unanticipated installation problems.

5. Obligations of Developer

a. Within 30 days following the execution of this Agreement, Developer shall reimburse the Company for its legal fees incurred in the negotiation and drafting of this Agreement.

b. Developer shall, at its sole expense, obtain any and all necessary permits, approvals and authorizations necessary to use the water in the manner contemplated herein and

for the Project generally. No mitigation water shall be used by Developer until all such permits, approvals and authorizations are issued, and mitigation water may only be used while such permits, approvals and authorizations remain in good standing.

c. Developer shall not cause or allow any toxic, hazardous, unsafe or unauthorized substance to enter into the Company's ditches or facilities. Developer shall prevent discharges from the Project that will impair the quality or beneficial use of the water used by the Company or that are harmful to humans, domestic animals, wildlife, fish or the environment. Developer shall comply with all applicable federal, state and local laws, regulations and ordinances relating to water quality. Developer shall take immediate action to abate the discharge of pollutants or unauthorized substances from the Project and shall reimburse the Company for any damages incurred by the Company as a consequence of such discharges, regardless of the cause.

d. Developer shall have no right to modify, alter or damage any of the Company's ditches or facilities, except for the installation of flumes as required herein.

e. For as long as this Agreement remains in effect, Johnson shall be obligated to maintain unencumbered ownership of the Shares (or properly transfer them to Developer, which shall thereafter maintain unencumbered ownership of them) and Developer shall be obligated to pay all regular assessments made by the Company against the Shares, meaning assessments levied against all shares generally for operation and maintenance revenues needed by the Company. In addition, Developer shall pay any and all other expenses incurred by the Company arising out of this Agreement, in recognition of the facts that (1) the Company would not be entering into this Agreement but for Developer's request and Developer's related Project needs, and (2) other shareholders should not be expected to pay expenses attributable in any way to the Project. The Company shall notify Developer of any such other expenses in writing and full payment from Developer shall be due within 30 days thereafter.

6. Company Modifications. The Company reserves the right to enlarge, relocate or otherwise modify all or any part of its ditches and distribution facilities, in its discretion, at any time, without liability to Developer or Johnson, even if such modifications force Developer to revise its mitigation or replacement procedures or facilities or adversely affect any aspect of the Project.

7. No Representations or Warranties. The Company makes no representations or warranties as to its ownership of water claim No. 11-04022 or any other water claim or right, or the ditches and facilities used by the Company, or the land containing the same, and hereby expressly disclaims any such representations or warranties.

8. No Segregation. Neither Developer nor Johnson shall have any right to segregate or partition their share of water, or any assets or improvements of the Company, or any portion of the Company's water claim.

9. No Prescriptive Use. Developer shall have no ownership interest, right-of-way interest or other interest whatsoever in or to the Company's ditches or other assets, through prescriptive use, adverse possession, or otherwise.

10. Indemnification. As further consideration for the rights granted herein to Developer, each of Developer and Johnson agree to indemnify, defend and hold harmless the Company, together with its officers, directors, employees, agents, successors and assigns, from any and all costs, expenses, claims, losses, damages and liabilities of whatever nature (including but not limited to attorney fees) in any way arising out of this Agreement or the Project, including but not limited to any damage caused by erosion, flooding, water loss, drowning, or the discharge of pollutants or hazardous substances. The parties intend for this Agreement to be

interpreted so as to give the Company the broadest possible indemnification. The provisions of this Section shall survive any termination of this Agreement.

11. **Insurance.** During the term of this Agreement Developer, or Johnson shall maintain a policy of general liability insurance with reasonable policy limits protecting against bodily injury and property damage, and a certificate of such insurance coverage shall be given to the Company prior to the release of any mitigation or replacement water. The Company shall be named as an additional insured under the policy. The policy shall include a provision to the effect that the Company shall be given not less than 30 days prior written notice by certified mail of any cancellation or change that affects the coverage, and the certificate given to the Company shall recite the same.

12. **Protection of Company's Water Claim.** The Company provides only irrigation water and irrigation is the beneficial use that maintains the Company's water claim in good standing. In the event the Company's water claim should be reduced, limited or curtailed in any respect by the IDWR, by any adjudication proceeding, or by any court or other entity by virtue of Developer's use of water for culinary or mitigation purposes instead of irrigation or by virtue of Developer's use or return of water outside the Company's normal place of use of water, all such reduction shall be attributed solely to the Shares and not to the shares of any other shareholders. The intent of this provision is to ensure that any such reduction shall be borne exclusively by Johnson and not by any other shareholders. Likewise, any lands taken out of irrigation through construction of the Project shall be attributable solely to the Shares. If necessary, the number of Shares may be reduced by the Company to account for any such reduction, limitation or curtailment.

13. **Proof of Use.** If the IDWR requires the submission of any proof of use, proof of change, proof of transfer, or other documentation of construction or use in connection with the Project, in connection with Developer's wells, or in connection with Developer's mitigation requirements, Developer shall be solely responsible for compiling and submitting the same at its sole expense.

14. **Compliance by Developer.** Developer shall be obligated to strictly abide by all provisions of this Agreement. The rights granted to Developer herein are conditioned upon strict compliance with the terms of this Agreement. Each obligation imposed on Developer is a material term of this Agreement. The failure to comply with any term shall give rise to a breach of the entire Agreement which shall entitle the Company to the remedies described in this Agreement as well as to any and all other remedies available to the Company by law.

15. **No Liens.** In constructing the Project and any related mitigation facilities, Developer shall not allow any mechanics' or materialmen's liens to encumber any asset of the Company.

16. **Duration of Agreement.** Unless terminated by the Company or by mutual agreement of the parties, this Agreement shall be perpetual. The Company may terminate this Agreement immediately upon the occurrence of any of the following events:

a. Developer or Johnson breach any term of this Agreement and fail to cure such breach within 30 days after notice of the same by the Company.

b. Developer loses any regulatory approval, authorization or permit required in connection with the mitigation or replacement water.

c. The Company becomes required by any federal, state or local law, regulation, rule or agency to process or treat any mitigation or replacement water discharged into Bear Lake.

d. Developer becomes dissolved, files for bankruptcy protection, is the subject of an involuntary petition for bankruptcy, or otherwise becomes insolvent.

17. **Non-Contravention.** Neither Developer, nor Johnson shall use their status or voting rights as a shareholder to cause this Agreement to be contravened, and their contractual obligations hereunder shall not be altered by virtue of their status as a shareholder.

18. **Assignment.** This Agreement may not be assigned by Developer or Johnson, nor may they sublease any of their rights herein, without the Company's prior written consent, which shall not be unreasonably withheld. Any such assignment shall be subject to this Agreement. Any such assignment or transfer without the Company's prior written consent shall be void. Multiple assignments or subleases to multiple water users shall not be considered reasonable. There shall be no restrictions on assignments or transfers by the Company, but any such assignment or transfer shall be subject to this Agreement.

19. **Communications.** All communications required or permitted under this Agreement shall be in writing and delivered by hand or sent by United States mail or private courier to the addresses set forth below.

If to Developer or Johnson:

Sam's Hollow Water Company
c/o Randall C. Budge, Esq.
Racine, Olson, Nye, Budge & Bailey Chartered
201 East Center Street
Pocatello, Idaho 83201

If to the Company:

Fish Haven Water Users Company
Attn: William D. Stock, President
Fish Haven, Idaho 83287

Any party may, by written notice so delivered to the others, change the address to which delivery shall thereafter be made. Any such communication shall be deemed to have been delivered on the first business day after receipt.

20. **Authority of the Parties.** With regard to corporate parties, the persons signing this Agreement warrant that they have full authority to do so and that their corporation has undertaken and obtained whatever corporate formalities and approvals are necessary to enter into this Agreement.

21. **Third-Party Rights Prohibited.** The rights, duties and benefits contained in this Agreement shall apply only as among the Company, Developer and Johnson. This Agreement shall not create any rights in any other parties, including without limitation the shareholders of Developer (other than Johnson who is a party hereto) or anyone purchasing any ownership or usage rights in the Project.

22. **Attorney Fees.** In the event an action is commenced to enforce the terms of this Agreement or for any other relief resulting from a default or breach, in addition to any remedy provided by law, the prevailing party shall be entitled to reimbursement of all costs and expenses incurred in bringing the action, including reasonable attorney fees.

23. **Entire Agreement.** This Agreement represents the entire agreement among the parties hereto and supersedes all prior agreements and understandings concerning its subject

matter. This Agreement shall not be amended or modified except by written instrument signed by all parties hereto.

24. **Waiver.** Failure by the Company at any time, or from time to time, to enforce or to require strict observance of any of the terms of this Agreement shall not constitute a waiver thereof, nor limit or impair such terms in any respect. In addition, any such failure shall not affect the Company's right to avail itself at any time of such remedies as it may have for any default hereunder.

25. **Survival.** All payment, reimbursement, indemnification and other provisions of this Agreement containing obligations that are intended to continue beyond the termination of this Agreement shall survive such termination and remain in effect until their existence is of no benefit to any party.

26. **Construction and Enforcement.** This Agreement shall be construed in accordance with and governed by the laws of the State of Idaho. This Agreement has been carefully reviewed and negotiated by all parties and their legal counsel, and it shall be construed as though all parties drafted it. The headings used herein are for convenience only and shall be disregarded in interpreting and enforcing this Agreement. This Agreement may be specifically enforced. The parties reiterate their intention that this Agreement be construed and enforced as provided in Recital F hereof.

27. **Binding Effect.** The parties reviewed and understood every term of this Agreement prior to its execution, and they have had the opportunity to review the agreement with legal counsel. Subject to the provisions of Section 18, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

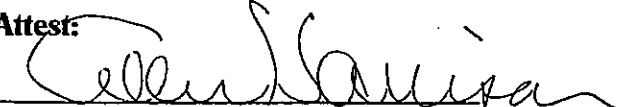
28. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, which taken together shall constitute one and the same document.

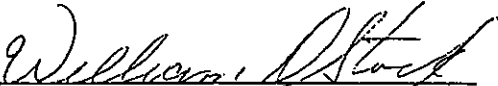
IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the date first set forth above.

Company:

FISH HAVEN WATER USERS COMPANY,
an Idaho corporation

Attest:


Board Member

By 
William D. Stock, President

Developer:

SAM'S HOLLOW WATER COMPANY, an
Idaho corporation

Attest:



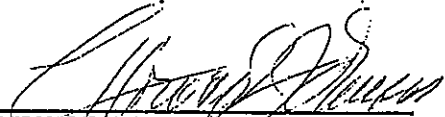
Con Gerdes, Secretary

By



C. Howard Johnson, President

Johnson:



C. HOWARD JOHNSON



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 24, 2004

Randall C. Budge
Racine Olson Nye & Budge Chtd.
201 East Center, Suite A2
P. O. Box 1391
Pocatello, ID 83204-1391

Re: Water Right Permits Nos. 11-7481 and 11-7491 in the Name of Sam's Hollow Water Company

Dear Randy:

This letter is sent to follow up on a meeting held on August 4, 2004, involving myself, staff of the Idaho Department of Water Resources ("Department" or "IDWR"), as well as representatives of Sam's Hollow Water Company ("Sam's Hollow"), and your subsequent telephone conversation with the Department's attorney, Phillip Rassier. The subject of the meeting and your subsequent conversation with Mr. Rassier focused on alternative methods available to satisfy the requirements of Condition No. 7 of the Department's Preliminary Order dated April 23, 2004, which is now a final order. Condition No. 7 of the order provides:

7. The use of water diverted by Fish Haven Water Users Company under water right no. 11-4022 for mitigation purposes must be represented by (a) an approved transfer recognizing the change in nature of use from irrigation to mitigation, or (b) an approved lease of a portion of water right no. 11-4022 to the Idaho Water Supply Bank for mitigation purposes. Diversion and use for mitigation without written approval by IDWR will be an illegal diversion of water.

The first issue on which Sam's Hollow seeks guidance is whether the change in nature of use from irrigation to mitigation contemplated under Condition No. 7 may occur through a single transfer proceeding, or whether the change must occur seriatim as water use is gradually converted from irrigation to mitigation over the 20 to 40 years it may take for total build-out of the Bear Lake Haven Subdivision. The Department agrees that the proposed transfer proceeding recognizing the change in nature of use of water from irrigation to mitigation may occur through a single transfer proceeding which would add mitigation as an additional authorized purpose of use to the existing irrigation rights that are being made available to mitigate the effects of diverting water under newly approved permits nos. 11-7481 and 11-7491. However, the Department will require annual reporting of the extent of use for irrigation and mitigation under the portion of water right no. 11-4022 transferred to ensure there is no enlargement in use.

Randall C. Budge
August 24, 2004
Page 2 of 2

The second issue on which Sam's Hollow seeks guidance relates to the Agreement dated March 14, 2002, that Sam's Hollow entered into with Fish Haven Water Users Company ("Fish Haven") and C. Howard Johnson. Fish Haven is the legal titleholder of water right no. 11-4022, which is used to provide water for irrigation purposes to its shareholders. The issue raised is whether the Department views the Agreement dated March 14, 2002, as providing the necessary consent of Fish Haven for Sam's Hollow to file a transfer application pursuant to Idaho Code §§ 42-108 and 42-222 to add mitigation as an authorized purpose of use for that portion of the Fish Haven water right proposed to be used for mitigation purposes.

Upon review of the Agreement dated March 14, 2002, and consultation with the Department's legal counsel, I have concluded that the Agreement does contain the necessary consent of Fish Haven authorizing Sam's Hollow to file a transfer application to add mitigation as an approved purpose of use to that portion of water right no. 11-4022 which is to be used for mitigation purposes. This conclusion is based upon paragraphs 1, 2.b., and 5.b. of the Agreement under which Fish Haven consents to the use by Sam's Hollow of the subject water shares to meet its mitigation requirements as may be imposed by the Department for the subdivision project. The Agreement also authorizes Sam's Hollow to obtain at its sole expense "all necessary permits, approvals and authorizations necessary to use the water in the manner contemplated herein and for the Project generally."

Let me know if you need something more.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl J. Dreher", written over a horizontal line.

Karl J. Dreher
Director

Project No. 370-01-1999

Water Management and Operations Plan for Mitigation - Revised

Prepared for:

Sam's Hollow Water Company
Bear Lake, Idaho

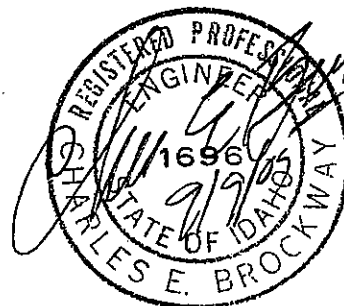
September 9, 2005

For information concerning this report, contact
Charles E. Brockway, Ph.D., P.E.



CHARLES E. BROCKWAY, PH.D., P.E.
CHARLES G. BROCKWAY, PH.D., P.E.

2016 NORTH WASHINGTON, SUITE 4
TWIN FALLS, IDAHO 83301



Water Management and Operations Plan for Mitigation - Revised

Sam's Hollow Water Company

Prepared for Sam's Hollow Water Company

Prepared by: Charles E. Brockway, P.E., Ph.D. - Brockway Engineering, PLLC
Date: Revised September 9, 2005

Introduction

Sam's Hollow Water Company is an Idaho non-profit corporation formed to provide culinary and irrigation water to Phase 1 and Phase 2 of the Bear Lake Haven subdivision near Fish Haven, Idaho, in Bear Lake County. The Company Articles of Incorporation were approved by the Secretary of State for Idaho and are included in Appendix A and a copy of the Operating Agreement between Sam's Hollow Water Company and C. Howard Johnson, owner of the subdivision property, is in Appendix F of this manual.

The culinary water supply and irrigation water for landscaping for the project is provided from ground water utilizing strategically located wells and a community distribution system. Irrigation water for cropped areas will continue to be supplied from the existing irrigation system from Fish Haven Creek. Water is pumped as needed from the aquifer and distributed using storage tanks and an engineered distribution system.

Under the recently adopted Management Plan for the Bear Lake Ground Water Management Area, any depletion to Bear Lake and/or Bear River resulting from subdivision development or other changes in use of water must be mitigated and an acceptable mitigation plan approved by the Idaho Department of Water Resources. This mitigation plan must incorporate guidelines for mitigation determination contained in the Bear Lake Ground Water Management Plan.

An application for a permit to develop and distribute ground water for the proposed project with a mitigation plan was submitted to IDWR. The plan provided for mitigation of depletions from ground water development by conveying water historically used for irrigation on land within the Sam's Hollow Water Company service area directly to Bear Lake and drying up of historically irrigated land. The water from Fish Haven Creek, historically used for irrigation, is provided through shares in the Fish Haven Water Users Association to land owned by Bear Lake Haven Subdivision which is served by Sam's Hollow Water Company. Irrigation water is provided through three ditches from Fish Haven Creek to Sam's Hollow lands. An agreement, dated March 14, 2002, between the Fish Haven Water Users Association, Sam's Hollow Water Company and C. Howard Johnson provides for the use of shares for mitigation of depletions caused by ground water pumping. The agreement stipulates that Sam's Hollow Water Company will continue to divert water from Fish Haven Creek as has historically been accomplished and return the necessary water directly to Bear Lake for mitigation purposes. A copy of this Agreement is included in Appendix B.

The application for permit was protested and a hearing held by IDWR. A stipulated agreement between Sam's Hollow Water Company and Pacific Corp was adopted and Pacific Corp withdrew their protest. A copy of that Agreement is included in Appendix C. An order approving the permit and mitigation plan was issued by the Department on May 24, 2004. Pursuant to the Order, Permits were issued for water rights 11-7481 and 11-7491 on September 7, 2004. Condition #4 of the Order and permits require the submittal and approval by IDWR of an Water Management and Operations Plan for the project to outline the procedures to be used by Sam's Hollow for complying with the mitigation requirements for the project.

The purpose of this plan is therefore to outline specific procedures to be followed by personnel of Sam's Hollow Water Company to assure that proper mitigation of depletions caused by the project are maintained.

Water Supply Available for Mitigation

Distribution System and Flow Measurements

Water supply available to Sam's Hollow Water Company for use on lands of the Bear Lake Haven Subdivision is via shares in the Fish Haven Water Users Association. These shares can be diverted through any of three ditches: the Upper North Ditch, Number 1 Ditch and Number 3 Ditch. These ditches now have been instrumented with water measuring flumes and flow measurements

are being obtained on each of these three ditches and the other two ditches diverting to the south from Fish Haven Creek. The flumes were installed by the Fish Haven Water Users Company with assistance from Sam's Hollow Water Company and are being monitored by Sam's Hollow Water Company twice a week. Measurements began on May 22, 2004. These bi-weekly measurements will continue to be obtained either by the Fish Haven Water Users Company or by Sam's Hollow Water Company. Time and date of commencement or cessation of diversion into each ditch will be logged as well as discharge set at commencement and discharge just prior to cessation. Data obtained through August 24, 2004 are contained in the Diversion Log sheets in Appendix D.

Compilations of the historical water available for diversion to Sam's Hollow Water Company through each ditch will be made each month based on the shares applicable to the Sam's Hollow service area. Measurements and historical monthly water availability will be made each year for the irrigation season.

Estimation of Sufficiency of Mitigation Water

Build-out of the subdivision will likely occur over at least 10 years and a data base of Fish Haven Creek diversions will be compiled. The seasonal water availability for Sam's Hollow will be compared with selected snow course data and/or Bear River forecast data to determine indicators of expected water availability for pending irrigation seasons. A determination will be made by April 1 of each year as to the estimated water available for mitigation for the pending irrigation season. An estimate of expected depletion from the project ground water based on the number of units on-line for the next season will be made by April 1 of each year using procedures approved in the Bear River Ground Water Management Plan.

Reporting

The President of Sam's Hollow Water Company will be responsible for monitoring and management of the water system and mitigation system. An annual report will be prepared which will include the number and type of units being served by the water system, monthly and annual water use by each of the wells in the system, monthly and annual water received under shares in each ditch from Fish Haven Water Users Company, irrigated acres within the project, estimated annual depletion attributable to the project and monthly and annual measured flow volume returned to Bear Lake through the mitigation pipeline. This report will be submitted to the Idaho Department of Water Resources and made available to members of Sam's Hollow Water Company and Fish Haven Water Users Company .

Mitigation Water Return System

A pipeline to return diverted water from Fish Haven Creek will be designed and installed to convey water directly from the ditch(s) traversing the property to Bear Lake. In Phase I of the project, a pipeline directly from No 1 ditch and No 3 ditch eastward (downhill) to the culvert under HW 89 and into Bear Lake will be installed. A flow meter will be installed in this pipeline upstream of the entrance to the culvert with a control valve and valve box. This will allow conveyance of water directly from the two ditches to Bear Lake. The pipeline and flow meter sizes will be determined when the system is designed but will likely be six (6) inch diameter. When build-out is sufficient, the pipeline may be modified and extended westward (uphill) to the Upper North ditch if necessary. Alternately, shares from the Upper North ditch may be transferred to the Number 1 and Number 3 ditches.

Monitoring

The President of Sam's Hollow Water Company will be responsible for securing measurements on water diversions from Fish Haven Creek either from the Fish Haven Water Users Company or by continued measurement by Sam's Hollow Water Company of diversion discharge in the event the Fish Haven Water Users Company fails to continue the monitoring program. Sam's Hollow Water Company instituted a flow measurement protocol for the Fish Haven ditches and has been monitoring these flows for the 2004 irrigation season. Sam's Hollow Water Company will continue to monitor these ditch flows if the Fish Haven Water Users Association fails to continue the water measurement program and provide the flow data to Sam's Hollow. In addition the President will be responsible for providing measurement of discharge and volume flows from all wells in the system as well as mitigation return flows to Bear Lake. The Manager will operate the mitigation return system to assure that the required mitigation water is being returned to Bear Lake and that the project is in compliance with all provisions of the Order.

Mitigation Depletion Calculation

The volume of mitigation water required to be returned to Bear Lake will depend on the number and type of units being served by the water system. Procedures outlined in Exhibit #14 of the hearing, Narrative in Support of Application for Permit, Sam's Hollow Water Company Phase I and Phase 2, revised October 7, 2003, will be utilized to determine the required mitigation volumes. These

procedures are also included as Exhibit C of the Settlement Agreement between Sam's Hollow Water Company and PacifiCorp.

Flow Measurement Sites

Discharge and flow measurement sites will be instrumented with IDWR approved measuring devices. These meters will be equipped with instantaneous discharge and totalizer capability and will be either in-line propeller type meters (McCrometer or equivalent) or magnetic meters with digital readout (Sparling TigerMac or equivalent.)

Discharge and volume measurements will be made on:

1. All wells in the project
2. Direct flow through the pipeline to Bear Lake
3. All ditches from Fish Haven Creek.

Notification

By May 1 of each year, a determination of the adequacy of available mitigation water will be made and, if the estimated depletion exceeds the estimated available supply, the members will be notified by Sam's Hollow Water Company of the need to implement conservation measures. This notification will be by registered mail to each member outlining the measures to be implemented.

Conservation Measures

In the event conservation measures have to be implemented, Sam's Hollow Water Company will determine the required measures based on estimated depletion calculated using the Ground Water Management Plan guidelines (Exhibit #14) and the estimated available water for mitigation from the canal system. Specific measures will be determined at the time and can include:

1. Curtailment of additional crop irrigation
2. Full or partial curtailment of landscape irrigation
3. Reduction or curtailment of water use for any recreational or aesthetic facilities

Enforcement of any conservation measures will be performed by the Manager as dictated by the Board of Sam's Hollow Water Company.

The Fish Haven Water Users Association water right is a statutory claim (11-4022.) This claim is for a beneficial use for diversion of 29.6 cfs for irrigation of 1212 acres with a priority date of May 18, 1871. This claim has not been adjudicated by the Idaho Department of Water Resources. Mr. Pete Peterson, Watermaster for the Bear River indicates that in the Bear River system, natural flow rights with priority of May 18, 1871 have never been cut off. Sam's Hollow Water Company has 140.5 shares or 11 percent of the reported 1283.02 shares of Fish Haven Water Users Association applicable to approximately 120 acres of irrigated land within the project. It is estimated that Sam's Hollow Water Company would have to provide 110 acre feet annually returned to Bear Lake to mitigate for the full project (Phase 1 and Phase 2) build out.

In the event the water available to Fish Haven Water Users under statutory claim #11-4022 is modified, the appropriate changes in the mitigation plan will be determined and incorporated. Ample time will be available to secure additional water for mitigation either from additional shares in the Fish Haven system or other transfers since full build out may take 20 years. If additional water for mitigation is necessary but not available in a timely manner, annual ground water use by the project will be curtailed to assure compliance with the mitigation plan. This could entail, at a minimum, ground water extraction only for in-house use.

Appendices

- A. Sam's Hollow Water Company Articles of Incorporation
- B. Agreement-Fish Haven Water Users Association, Sam's Hollow Water Company and C. Howard Johnson
- C. Agreement-Sam's Hollow Water Company and Pacific Corp
- D. Fish Haven Creek Diversions-2004
- E. Development Operating Agreement – Sam's Hollow Water Company and C. Howard Johnson

Operations Manual

Sam's Hollow Water Company

September 8, 2005

Operations Manual

Sam's Hollow Water Company

Prepared by: Charles E. Brockway, P.E., Ph.D. - Brockway Engineering, PLLC
Date: September 8, 2005

Introduction

This manual was prepared in compliance with the Order by the Idaho Department of Water Resources approving water right permit nos. 11-7481 and 11-7491. Specifically, the Order requires an 'operations manual for the benefit of employees working for Sam's Hollow that describes duties relative to operation, monitoring and reporting'

This manual was prepared prior to the final design and configuration of the domestic water system and mitigation system. As the final designs are completed this manual will be revised to reflect operation of specific types of equipment within the pumping and delivery systems.

System Objectives and Requirements

Sam's Hollow Water Company provides culinary and irrigation water to Phase 1 and Phase 2 of the Bear Lake Haven subdivision near Fish Haven, Idaho, in Bear Lake County. Employees, under the supervision of the Company manager are required to operate the water system to provide domestic water and irrigation to each residential lot and commercial facility. In addition, assigned employees are required to operate, maintain, and report operations of a water mitigation system which returns irrigation water diverted to the project directly to Bear Lake.

Culinary Water System

The water system provides culinary water and irrigation water for landscaping from wells situated throughout the project area through pipelines with service to individual lots and establishments. All well operation is either pressure controlled or regulated by water levels within storage tanks. Storage tanks are installed within the system to maintain water pressure and provide discharge for fire flow

capability. Pressure regulating valves are installed in mainlines at hydraulically strategic locations to maintain operating pressures within the system. Service taps to individual lots and establishments are equipped with stop-and-waste valves. The Company is responsible for installation and maintenance of the system through and including the service tap. Lot owners are responsible for installation and maintenance of distribution piping within their property.

Irrigation System

Irrigation water for cropped areas will continue to be supplied from the existing ditch irrigation system from Fish Haven Creek. The Company water rights for irrigation are supplied through three ditches diverting from Fish Haven Creek. These ditches are designated by the Fish Haven Water Users Company as the Upper North, #1, and #3 ditches. Water is delivered to Sam's Hollow Water Company lands by Fish Haven Water Users Company under an allocation system based on the number of shares in the Company owned by each user. This distribution may be on a rotation basis with the frequency of delivery to each user determined by the availability of flow in Fish Haven Creek. The discharge in each ditch is currently measured and reported by either the Fish Haven Water Users Company or by Sam's Hollow personnel depending on agreements between the companies. Irrigation water available to project lands is applied to fields through existing ditches and turnouts.

Mitigation System.

Under the IDWR Order, and based on the recently adopted Management Plan for the Bear Lake Ground Water Management Area, any depletion to Bear Lake and/or Bear River resulting from subdivision development or other changes in use of water must be mitigated by Sam's Hollow Water Company.

The mitigation plan provides for mitigation of depletions from ground water development by conveying water historically used for irrigation on land within the Sam's Hollow Water Company service area directly to Bear Lake and drying up of historically irrigated land. Some of the water from Fish Haven Creek, historically used for irrigation on project lands, is returned directly to Bear Lake for mitigation purposes through pipelines constructed from the ditches.

The purpose of this plan is to outline specific procedures to be followed by personnel of Sam's Hollow Water Company to assure proper operation of the system, including the mitigation of depletions caused by the project.

President will prepare an annual report which will include the number and type of units being served by the water system, monthly and annual water use by each of the wells in the system, monthly and annual water received under shares in each ditch from Fish Haven Water Users Company, irrigated acres within the project, estimated annual depletion attributable to the project and monthly and annual measured flow volume returned to Bear Lake through the mitigation pipeline. This report will be submitted to the Idaho Department of Water Resources and made available to members of Sam's Hollow Water Company and Fish Haven Water Users Company.