

Gary J. Payne
2940 W. Wapoot St.
Meridian, Idaho 83646-5670
Telephone: 208-884-1572

August 12, 2010

Before the Department of Water Resources of the State of Idaho

In the matter of application for
permit No. 11-7582 and 74914
and 74916 (in the name
of The Retreat at Bear lake, LLC,
d/b/a Black Bear Resort)

Discovery requests to the Retreat at Bear Lake

My Questions and concerns are on the following pages with exhibits to show what and where the areas are
that I am referring to in my statements.

RECEIVED

AUG 16 2010

Department of Water Resources
Eastern Region

Concerning the water plans for Black Bear Mountain

A. I am concerned about what will happen to the waters of Worm Creek. The aquifer for Worm Creek Lake is fed by the Sinks and the springs from surface aquifers coming down the canyon that are fed by the winter snow pack in the canyon and on the mountain where the resort is being built. The amount of flow in worm creek varies year to year, dependant upon whether it is a wet year or dry year. These all contribute to the amount of water that comes down the canyon in Worm Creek to water our crops.

At the meetings, it was acknowledged that drilling might possibly affect Spring Creek, so isn't it likely to affect Worm Creek since Spring Creek is approximately 1 1/2 mile away and starts lower down the canyon than Worm Creek and below the well head. I am very concerned that drilling up the canyon will deplete the aquifer that supplies water that feed the lake and the small springs that run into the creek as it flows down the canyon.

Exhibit # 1--maps of the watershed area including Worm Creek Lake labled Paris, Idaho and Paris Peak, Idaho

Exhibit # 2--Arial photo of the layout of Worm Creek and the canyon where the creek flows with the location of the Resort and its proximity to Worm Creek.

Exhibit # 3--Arial photo of my property and where Worm Creek comes on to it.

Exhibit #4—Geology & hydrology of St. Charles & Bloomington Idaho Area Bear Mountain Development - Wellsites and map

B. Where will the reservoir be built?

The plans I received indicate a huge million gallon reservoir for the recycling of the water to be used for snow making in the ski area, irrigation of the golf course, etc. If this is built in Worm Creek Canyon it would trap the water from the springs and snowpack runoff coming down the hillsides that feed the creek, there-by decreasing the amount of irrigation water available to me and the other 3 farmers at the bottom of the canyon whose use was decreed by a court order and through the water department in 1984. All surface and spring water coming down Worm Creek canyon is currently for the use of the water right holders for designated point of use on farm land and use can only be changed by mutual agreement of all four in the rotation.

We want to make sure that none of Worm Creek water is diverted to a different point of use than it currently is.

The canyon is very narrow and not much room for more than a road and the creek at the bottom. We want to make sure that any dam or structure

built up that canyon will not interfere with the flow of the creek nor block it off, while still enabling the creek to absorb extra water on years of heavy runoff.

Exhibit # 5—Preliminary order adopting a ground water management plan from the State of Idaho- Bear River Water Management Plan.

- A. Page 1 bullet 4
- B. Page 2 # 9 and 10
- D. page 4 paragraph 3
- G. Page 9 #2
- H. page 10

Exhibit # 6 water measurement of Worm Creek Water in 1904 used for water rights to farmers.

Exhibit # 7 Court decree of how Worm Creek Water was to be used.

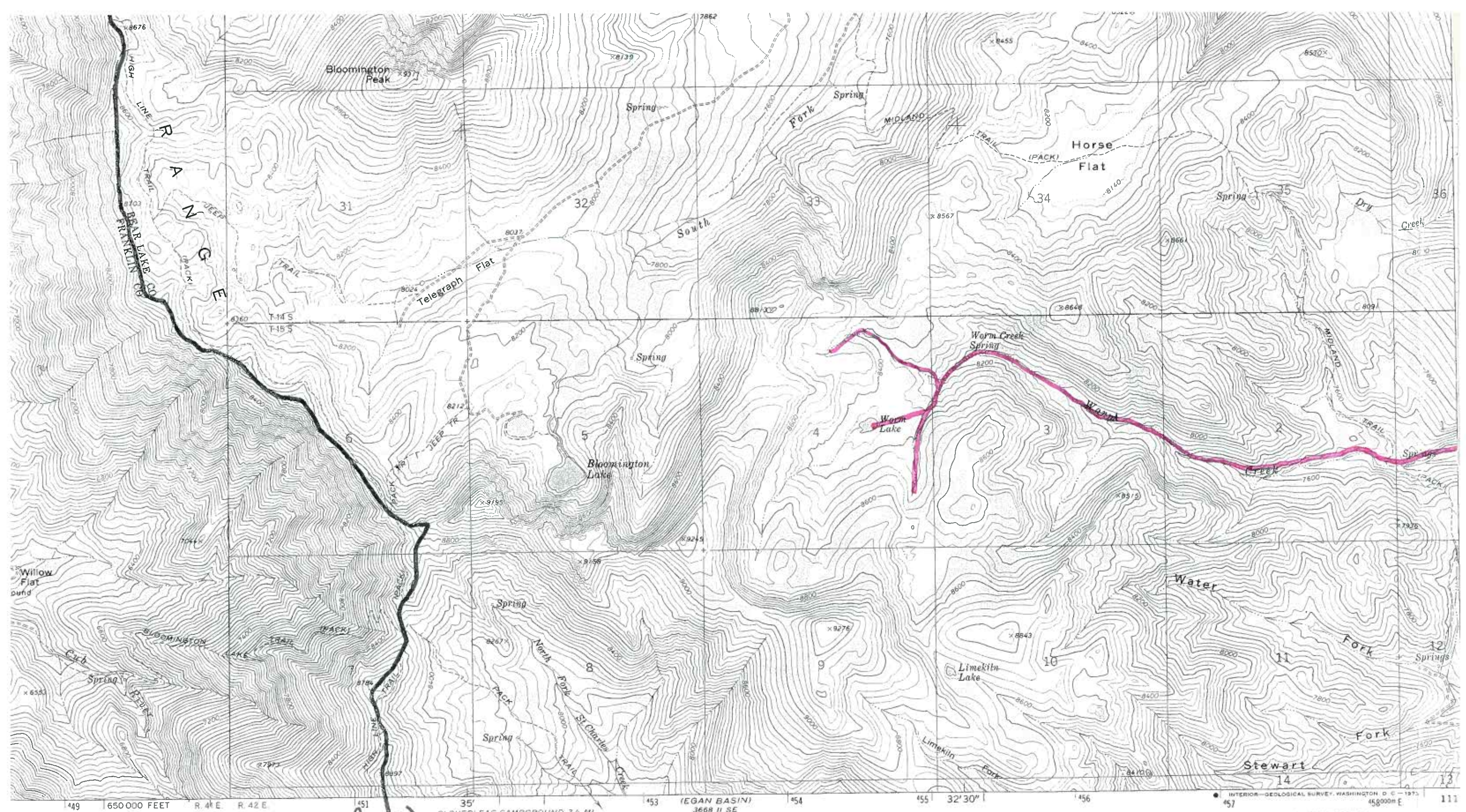
Exhibit # 8 Bear Mountain statement on size of reservoir

Dated this 12 th day of August 2010



Gary J. Payne
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Meridian, Idaho 83646

Phone 208-884-1572



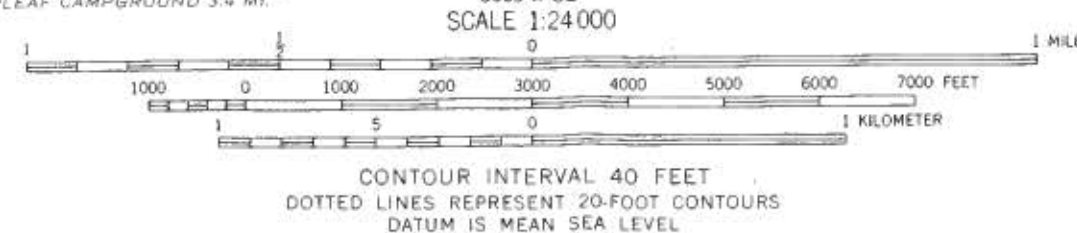
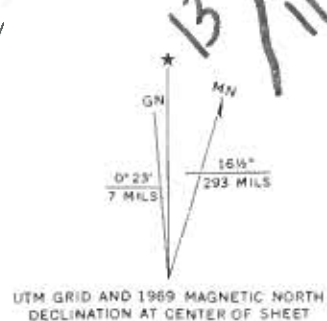
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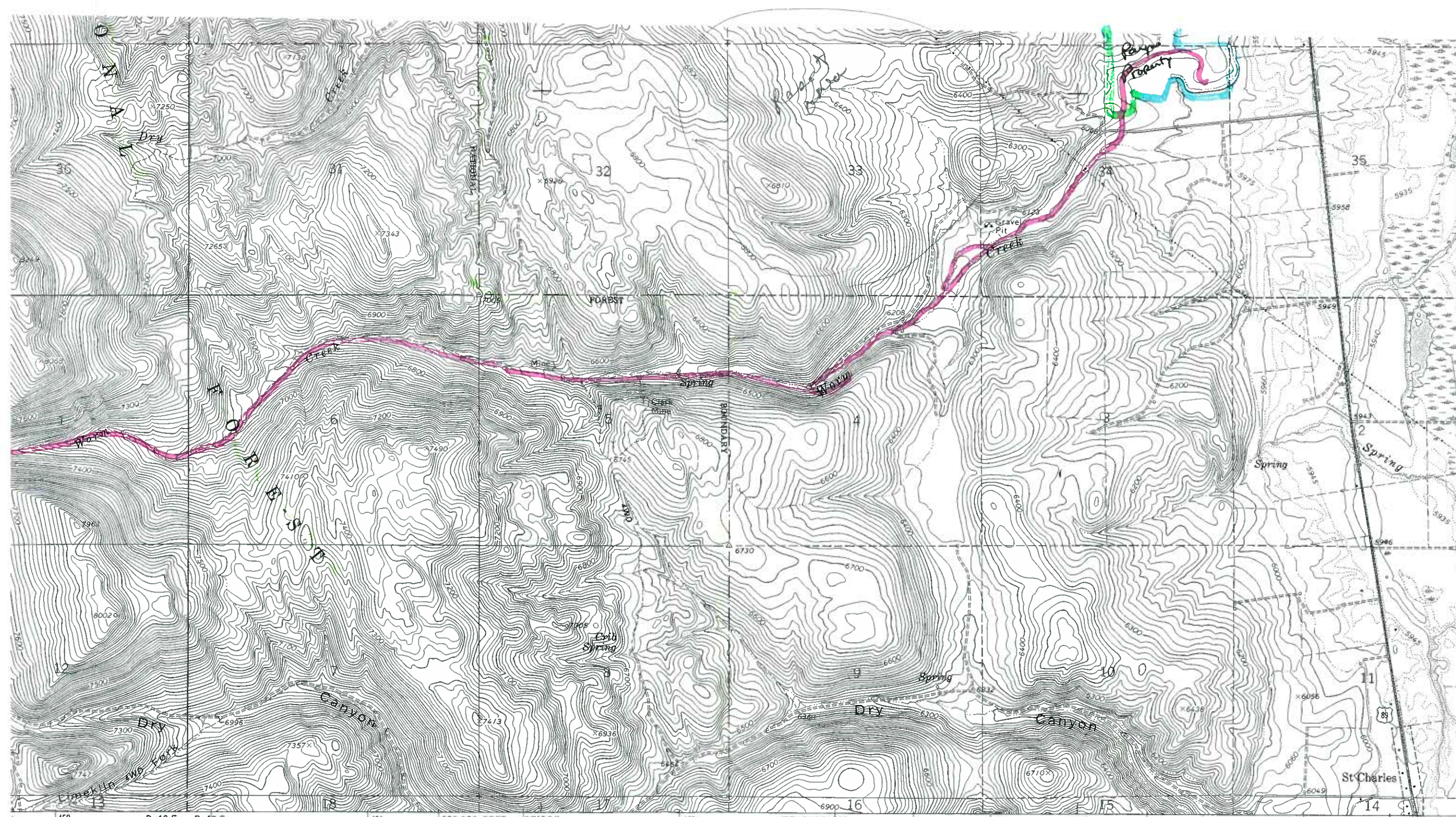
ter Universal Transverse Mercator grid ticks,
shown in blue

itted, land lines have not been established

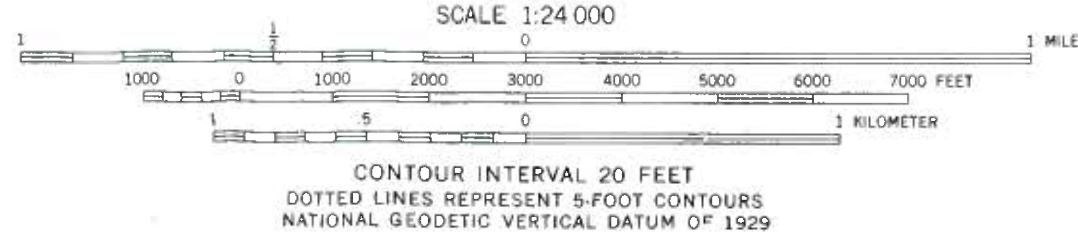
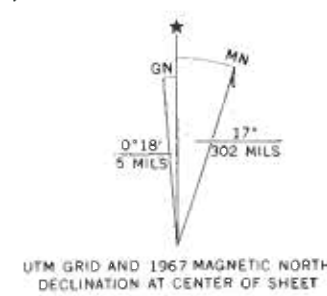


ROAD CLASSIFICATION	
Primary highway, hard surface	Light-duty road, hard or improved surface
Secondary highway, hard surface	Unimproved road
○ Interstate Route	○ U. S. Route
	○ State Route

PARIS PEAK, IDAHO



Mapped, edited, and published by the Geological Survey
Control by USGS and NOS/NOAA
Topography by photogrammetric methods from aerial photographs taken 1966. Field checked 1967
Polyconic projection. 1927 North American Datum
10,000-foot grid based on Idaho coordinate system,
East zone
1000-meter Universal Transverse Mercator grid ticks, zone 12,
shown in blue
The difference between 1927 North American Datum and North
American Datum of 1983 (NAD 83) for 7.5 minute intersections is



Primary highway,
hard surface
Secondary highway,
hard surface
Interstate Route U
Map name:
0 - 11

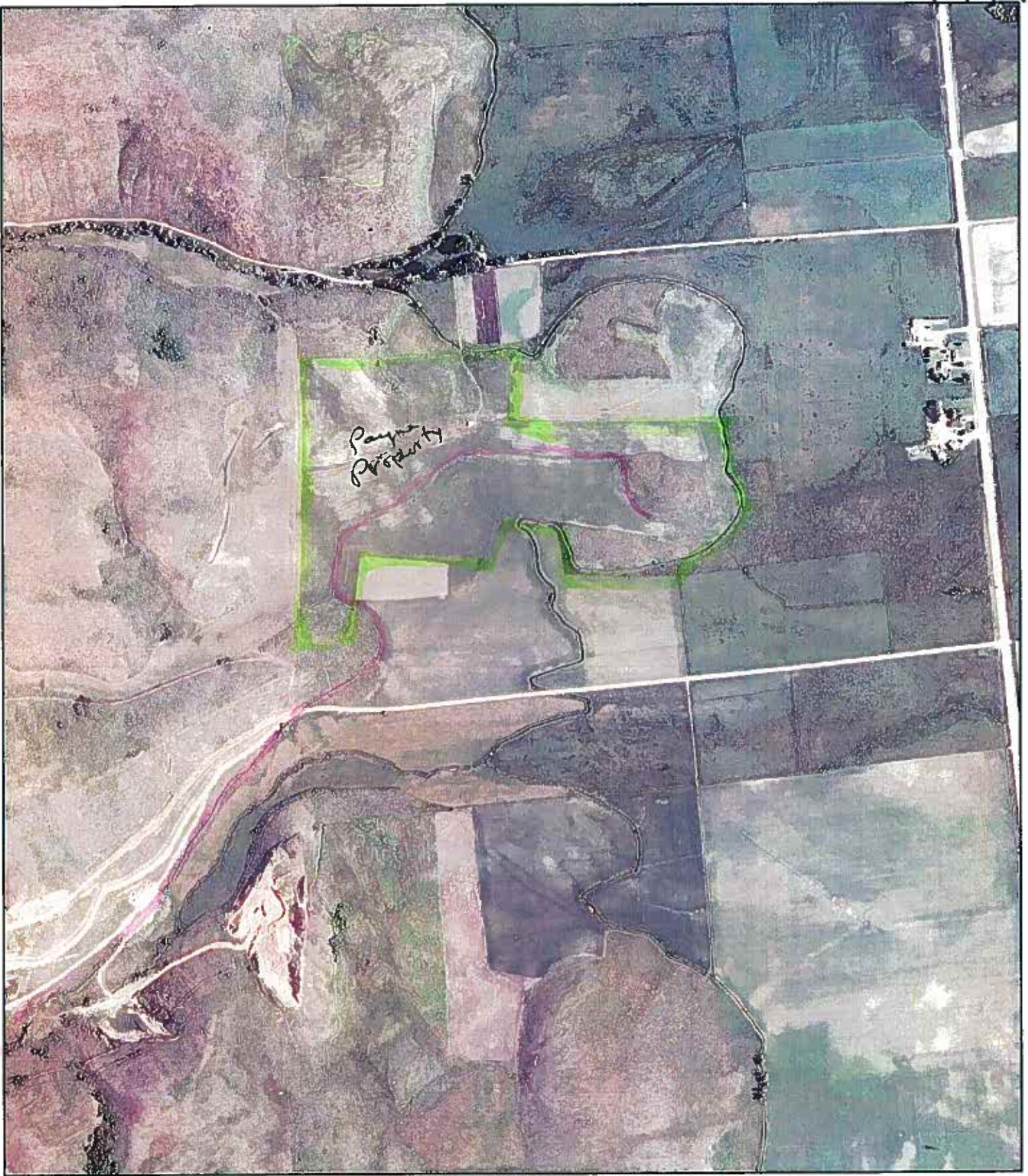


Warm Creek Lake

[Print](#)[Send](#)[Link](#)

Payne Property

Wetland
Check to my farm



USDA Farm Service Agency
Bear Lake County, ID

Wetland Determination Identifiers:
● Restricted Use ● Limited Restrictions
■ Exempt from Conservation Compliance Provisions

May 26, 2010

1:10,127



Disclaimer: Wetland identifiers do not represent the size, shape or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NRCS. This map is for USDA-FSA Program administration only. There is no guarantee or representation as to the accuracy, currency, suitability or reliability for any other purpose. The user accepts the data "As Is" and assumes all risks associated with its use.

pumping rates.

Three small domestic wells have also been completed in the Salt Lake Formation in the Paris, Idaho area (Appendix A). These wells are also completed in the gravel/conglomerate layers and were tested at 7 - 60 gpm with up to 250 feet of drawdown. The lithology reported for well #699632 (398 feet deep) is the most representative of the Salt Lake Formation in this area.

The drawdown seen in the driller's pump tests is most likely a result of the transmissivity of the gravel/conglomerate units in the Salt Lake Formation. The gravel layers reported by the drillers are more likely moderate to well consolidated conglomerates with significant cementation of the clasts reducing porosity and permeability.

Conclusions and Recommendations

Wells located west of the Lead Bell Shale and the Paris Thrust Fault have greater potential to be high yielding if sufficient secondary porosity or interconnected fracturing exists. Areas or formations with known fracturing and large recharge areas have been targeted. Four wellsites have been selected as potential drilling targets. Wellsites 1 - 4 are listed in order of priority with wellsite #1 being the most favorable for a high yielding well and wellsite #4 as the least favorable. The wellsites are plotted on the geologic map in Appendix A & B.

Wellsite #1 & #2

It is recommended that the Bloomington Formation in the southwest corner of sec. 32, T14S, R43E be the primary target for a high yielding well. It is conceptualized that the basal Hodges Shale member of the formation acts as an impermeable boundary impeding groundwater flow effectively impounding groundwater in the lower limestone member of the Bloomington Formation. Locally the formation is cut by a reverse fault potentially fracturing the formation. Two 6 inch domestic wells (#699578, #699596) in section 19, T14S, R43E are completed in the Bloomington Formation (Appendix A & C, x-sect. B-B'). The well driller's reports show the formation to be fractured with the fracture zones producing groundwater (Appendix G). Both wells show the aquifer to be under pressure with hydraulic heads of 60 & 112 feet respectively. Both wells are located on the west side of the reverse fault within 100 - 150 feet of the fault. This formation is also well documented to be susceptible to solution in the presence of groundwater.

A well at this location would potentially have to be 400 - 500 feet deep (Appendix C, x-sect. C-C'), and the irregularity of fracturing and/or solution in the formation may require multiple test wells to locate a productive or suitable zone. This is one of the disadvantages of locating a well in the Bloomington Formation. While this formation is well documented as being susceptible to fracturing and solution activity along fracture, this characteristic may be very localized and irregular and is not typically extensive throughout a formation. Therefore, knowing or predicting where these conditions exist in the absence of surface expressions is very difficult prior to

drilling.

However, the presence of the fault cutting the formation along strike and the potential for associated fracturing, and an impermeable barrier at the base of the formation creates a very good setting for a good carbonate aquifer.

Two areas are recommended for possible test wells in the Bloomington Formation. Wellsite #1 is located on the west side (footwall) of the fault and is recommended as the first location for a test well. Wellsite #2 if necessary should be drilled on the east side of the fault in the hanging wall drilling through the fault into the footwall block of the fault. More field work may be needed to better define an exact location before drilling.

Another potential problem to a well completed in the Bloomington Formation is the concern neighboring water user's may have for impact or impairment to the Bloomington and Jarvis Springs. This issue has not been evaluated in any detail and may not be able to be evaluated until a test well is completed. It does appear that the upper extent of the recharge area to a well may overlap with the upper extent of the recharge area to Bloomington Spring as delineated by Wylie et al. (2005) (Appendix A & B).

The source protection area to the well would extend west of the well. The land west of this site is Forest Service land and there would likely be little development or activity above the well that would adversely affect groundwater to the well or create source protection problems.

Wellsite #3

The second possible target area is the Salt Lake Formation on the east side of the project area. From the data available it does not appear wells completed in the Salt Lake Formation would be high yielding but may be sufficient to provide a supplemental source if multiple wells are required to provide sufficient water to the system; particularly if storage is planned. The existing wells in the area completed in the Salt Lake Formation are generally only 6 - 8 inch diameter well driller drilled to the minimum depth with a minimum perforations required for a single family domestic use. In fact, several of the wells did not perforate water bearing sand and gravel layers reported by the driller to be water bearing (#699632, #699539 & #699576 Appendix G). In the St. Charles area most of the wells are only 160 to 300 feet deep. Oriel and Platt (1980) and Williams (1964) describe the Salt Lake Formation as several thousand feet thick. Unfortunately, very little well data from the Salt Lake Formation exists in the project area. Based on the described overall thickness of the Salt Lake Formation by the various authors, it is not believed that the existing wells completed in the formation have exposed the full thickness of the formation in which more water bearing conglomerate layers may exist.

Wellsite #3 on the map in Appendix A is a proposed site for a test well in the Salt Lake Formation primarily because of its proximity to the development property. Based on well test data from wells in the area, and assuming similar water bearing gravel/conglomerate layers are encountered, a large diameter well (16-20 inch) drilled at least 600 feet deep may be required to

produce sufficient flows to support the development.

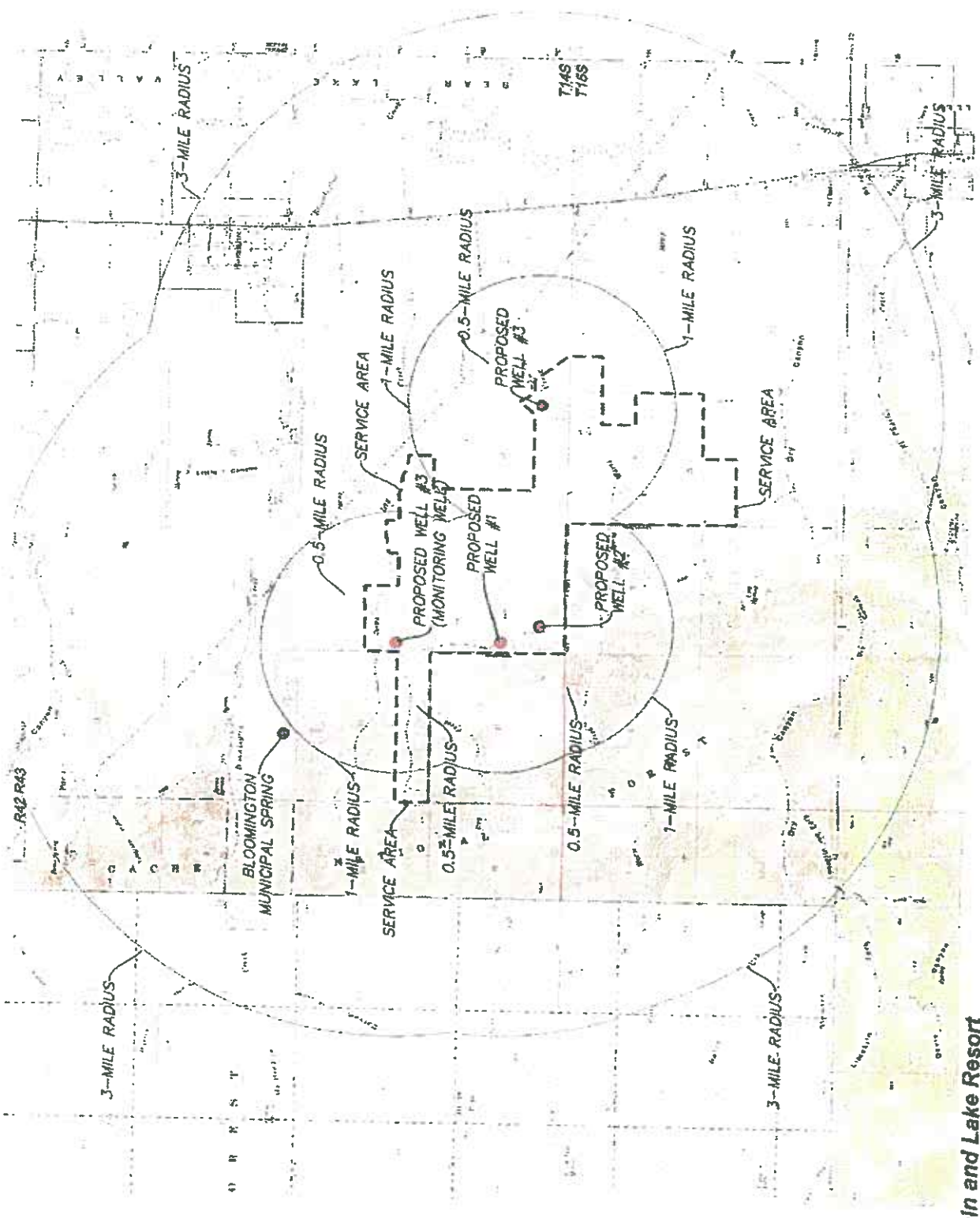
A disadvantage to a well in the Salt Lake Formation is that the water bearing gravels/conglomerates may lack direct connection to a large recharge area and may be limited to recharge from precipitation and stream flow on a small area between the wellsite and the Paris Thrust Fault less than 7,000 feet up gradient; unless there is a component of recharge to the Salt Lake Formation gravels from the north or south. Two other faults exist between wellsite #3 and the Paris Thrust Fault which may create some boundary conditions but it is not believed these normal faults create as impermeable boundaries as the Paris Thrust Fault.

Another possible disadvantages to a well in the Salt Lake Formation is that it would be down gradient from the development and may limit where some development occurs above the well. However, it may also be sufficiently protected by the overlying clay and marl units to be classified as a "protected aquifer".

Wellsite #4

A well located at wellsite #4 in the Wells Formation in the project area has the potential to be a good fracture controlled aquifer because of its proximity to major faulting and the susceptibility of the sandstone and limestone lithology to fracturing. However, because of the lack of any local data regarding the aquifer characteristics of the Wells Formation, such as wells and well reports, it ranks lowest as a potential drilling site. Also, it is unknown whether the formation is connected to a sufficiently large recharge area to produce sufficient water for the development.

The Paris Thrust Fault is believed to be a significant barrier to groundwater flow in the area. However, in the immediate area, a later extensional fault just west of wellsite #4 has dissected the plane of the thrust fault dropping the plane of the Paris Thrust Fault down to the west juxtaposing potentially fractured Brigham Quartzite in the hanging wall of the Thrust Fault against potentially fracture sandstone and limestone of the Wells Formation (Appendix C, x-sect. C-C'). Prior to extensional faulting the plane of the Paris Thrust Fault was exposed at the surface somewhere in the area of wellsite #4 creating an impermeable boundary that extended to the surface. As a result of extensional faulting the plane of the thrust fault was dropped some distance below ground level, removing the barrier and allowing groundwater to migrate from the Brigham Quartzite to the Wells Formation. It is uncertain how much displacement occurred along this fault. Extensional fault can be barriers to groundwater flow, but are generally not impermeable boundaries.



Black Bear - Mountain and Lake Resort

The Retreat at Bear Lake, LLC

printed on August 12, 2008



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MANAGEMENT PLAN FOR THE BEAR RIVER GROUND WATER MANAGEMENT AREA

A. BACKGROUND AND PURPOSE

On August 12, 2001, the Director of the Idaho Department of Water Resources issued an order establishing the Bear River Ground Water Management Area and creating an advisory committee to provide guidance in the preparation of a management plan. The plan set forth herein incorporates the recommendations of the advisory committee to achieve the following purposes:

- To accommodate projected growth and water demand in the Bear River Basin in Idaho while protecting senior priority water rights from surface and ground water sources from injury.
- To simplify and expedite acquisition of water rights needed for new developments from ground water by providing guidance to developers and by assuring holders of existing rights and the public that water management procedures protect their interests without the need for filing protests.
- To encourage innovative and flexible strategies for making water available for new development. Water can be made available through projects to develop Idaho's allocation of water under the Bear River Compact through new surface storage or ground water recharge projects and by transfers of existing water rights assisted through water banking and other marketing mechanisms.

A-4 (To prevent unauthorized uses of ground water where a right does not exist to divert and use the water or the diversion and use does not comply with the elements of the water right authorizing the use.

- To encourage conservation and wise use of the available water supplies in the Bear River Basin.
- To continue the involvement of the local advisory committee in the development of management policies for the area.
- To increase public and water user awareness of water management policies and methods in the Bear River Area.

B. DEFINITIONS

1. Bear River Ground Water Management Area (or Basin). That part of the Bear River Basin included within the Department's Administrative Basins 11 and 13, excluding the Bancroft-Lund Ground Water Management Area, as shown on Attachment A to this plan.
2. Board. The Idaho Water Resource Board.
3. Committee or Advisory Committee. The Bear River Ground Water Management Area advisory committee.
4. Conjunctive Administration. The combined administration of water rights from hydraulically connected surface and ground water sources under the prior appropriation doctrine as set forth in Idaho law recognizing the priorities of the rights, physical characteristics and significance of the source connectedness, and the differences in impacts occurring from surface water diversions versus impacts from ground water diversions.
5. DCMI. An acronym for domestic, commercial, municipal and industrial uses of water.
6. Depletion. The quantity of water depleted from the water supply of the Bear River Basin resulting from diversion and use of water or that would result from the diversion and use of water under a proposed project, as determined by the Director.
7. Director. The Director of the Idaho Department of Water Resources.
8. Department. The Idaho Department of Water Resources.
9. Hydraulically Connected Surface and Ground Water Sources. A ground water source and a surface water source physically interconnected such that a portion of the ground water can become surface water, or a portion of the surface water can become ground water, and changes in water levels within the ground water source affect the amount of water exchanged between the ground water source and the surface water source.
10. Injury. Injury to a senior priority water right occurs when water diverted under a junior priority water right diminishes the amount of water that otherwise would have been physically and legally available for the use authorized under the senior priority water right.
11. Mitigation. The result of an action taken by or for the benefit of the holder of a junior priority water right to prevent injury to a senior priority water right or to provide compensation acceptable to the holder of a senior priority water right for

D-

anyone seeking to appropriate water for a new use has the burden of showing that unappropriated water is available and that the new diversion and use can occur without injury to earlier priority rights to use the water supply. For decades, Bear River and its surface tributaries have been managed to recognize the priority of rights in Idaho and, through the provisions of the Bear River Compact, prior rights in Wyoming and Utah. Until recently, ground water has been administered as a source separate from surface flows in the Bear River basin and throughout Idaho. However, Idaho's water management policies have evolved to require conjunctive administration of water rights from hydraulically connected sources as needed to recognize priority of the rights from the sources.

Conjunctive administration requires that the effect of a proposed new use from ground water on existing rights from hydraulically connected surface water sources be determined before a permit is issued for the proposed new use. If a new use depletes the supply of water available to existing prior rights when water is needed to satisfy the beneficial use authorized under a prior right, a new use cannot be permitted unless the injury to the prior right is fully mitigated.

D. This plan is premised upon available information indicating that ground water and surface water is generally hydraulically connected throughout the Bear River basin in Idaho. Because of this interconnection and because the Bear River and its surface tributaries are appropriated to the extent that flows are not adequate to fully satisfy all existing rights during all or part of every year, an applicant for a new use from a ground water source must provide the information needed to evaluate the impact of the proposed new diversion and use on existing surface rights and offer mitigation appropriate to fully offset injury to other rights. Holders of water rights from Bear River have been routinely protesting approval of all applications to appropriate ground water for new consumptive uses, and applicants have found that the evaluation needed to allow conjunctive administration of a proposed new diversion and use can be arduous and expensive. As a result, a backlog of applications to appropriate ground water for irrigation, municipal, industrial and other consumptive uses has developed.

A key element of this plan, adopted from the recommendations of the advisory committee, is to shortcut the evaluation of injury to existing rights by providing a simplified method (herein termed the "simplified method") of determining the mitigation necessary to allow approval of a permit to appropriate ground water. The simplified method allows approval if the applicant submits a plan that will augment the flow of Bear River by an amount equal to the estimated annual depletion that will result from the new use. While the amount of the mitigation water determined by this method may be larger than would be required based upon a technical review of the amount of water needed to prevent injury to other water rights, the applicant is freed from making a detailed evaluation of the amount, location, and timing of mitigation that would be required to prevent injury to all existing surface and ground water rights as long as other water right holders do not protest approval and provide information to overcome the presumption that the simplified method does not adequately protect their rights.

G. SOURCES OF WATER FOR MITIGATION

The following section describes categories from which water supplies may be obtained to mitigate withdrawal and use of ground water for new consumptive purposes. No assurance is intended by this listing that water supplies will be available for purchase or lease from these sources. However, the Department does intend that the identification of the sources as viable for the purpose of mitigation of new consumptive ground water uses will encourage holders of water rights to identify quantities of water available for this purpose to aid applicants in obtaining the needed mitigation water. The options discussed below are not all-inclusive, and the suggestions are listed for illustration purposes. If an applicant proposes a mitigation plan using a water supply not listed, he or she should discuss it with the Department in advance.

1. **Stored Water.** A mitigation plan may identify a quantity of stored water from an existing reservoir with documentation that the applicant has obtained the right to use the water by purchase or lease. If the authorized purpose of use for the stored water does not provide for use for mitigation purposes, an application for transfer should be filed pursuant to Section 42-222, Idaho Code, or the stored water should be assigned to the Water Supply Bank to allow the change in use.

The mitigation plan must provide for the stored water to be available to the watermaster to release under a schedule approved by the Department to mitigate reductions in flow caused by diversion and use of ground water by the applicant. The quantity of stored water made available through the mitigation plan must equal or exceed the quantity of depletion estimated under the simplified method.

2. **Natural Flow.** All or part of the water available from a valid existing right to, divert the flow of Bear River or its surface tributaries may be identified as a source of water to mitigate reductions in flow resulting from diversion and use of ground water in the basin. The annual volume of water made available from the water right offered for mitigation to augment the flow of Bear River shall equal or exceed the annual volume of depletion resulting from diversion and use of ground water sought under the application. The annual volume of depletion made available from the natural flow right used for mitigation shall be calculated using depletion rates as described in section F3a, taking into consideration the availability of water under the priority of the water right, the existence and use of other water rights and water supplies for the same beneficial use, and other factors influencing the historic use of water under the right.

The proposed mitigation plan shall include either an application for transfer filed pursuant to Section 42-222, Idaho Code, to change the use of the natural flow water right to mitigation purposes or an application to place the water right into the Water Supply Bank for purposes of mitigation. Section 42-108, Idaho Code, requires the consent of the irrigation company or district if a transfer of water right is represented by shares. The Department will encourage flexibility in the

use of shares to allow transfers of irrigation company shares to new uses pursuant to company-enacted policy.

The previous use of the right or part of the right offered for mitigation shall be terminated and not be resumed while the mitigation plan is operative; i.e., for a natural flow irrigation right, the place of use shall not be irrigated unless another water right is obtained authorizing irrigation to be resumed. The proposed mitigation plan shall include authorization for the watermaster to distribute water under the right authorized for irrigation as directed by the Department to prevent injury to other water rights caused by diversion and use of ground water.

H. MANAGEMENT OF WATER RIGHTS.

Diversion and use of ground water under new and existing rights will be monitored and regulated in accordance with applicable law to prevent unauthorized uses.

1. **Measuring and Reporting of Ground Water Use.** New and existing rights to divert and use ground water for diversions greater than 0.24 cfs and/or greater than 5 acres of irrigation will be required to measure and annually report diversions. The requirement will be a condition of approval on newly issued rights and the holders of existing rights will be required to do so after entry of an order as provided in Section 42-701, Idaho Code, or upon the creation of a water measurement district as described in section I.2. The installation and maintenance of measuring devices will be required as appropriate, but alternatives to measuring devices such as estimates of diversion based upon power consumption coefficient, hour meters, and SEBAL (Surface Energy Balance Algorithm for Land) will be authorized whenever practicable.
2. **Enforcement of Diversion and Use of Existing Rights from Ground Water.** The Department will, with the assistance of the hydrographer of the water measurement district if a district is created, utilize available information, including reported diversion data, aerial photography, and satellite data to compare water diversion and use to authorized water rights. The Department will investigate diversion and use that appears to be unauthorized and take appropriate enforcement actions in accordance with the procedures of Sections 42-351 and 42-1701B, Idaho Code.

I. RELATED ACTIONS

There are several actions that the Department will take as appropriate to provide for effective management of water resources in the Bear River Basin. Several of the actions recommended by the advisory committee that, while not directly related to the management of ground water and which, therefore, cannot be accomplished through

Edward Haddock)
 Plaintiff.)
 vs.)
 Joseph E. Thornock;)
 Defendant.)

Be it remembered that this cause was commenced by filing the complaint on the thirteenth day of August, 1901, by Edward Haddock, plaintiff, against Joseph E. Thornock; that afterward upon showing duly made to the Court that Peter Greenhalgh, James A. Nelson, E. J. Haddock, D.A. Krogue, Levi H. Long, David A. Nelson, N.P. Rasmussen, Fred Jacobson, O.C. Dunford, Jacob Welker, Nelson C. Nelson, and James G. Welker, were necessary and proper parties to this action, it was ordered that they be made parties defendant; that afterward to wit; on the 23rd day of June, 1902, all of said parties to this action agreed in writing to and did appoint Alma Findlay, J. A. Hulme, and H.H. Broomhead as Referees, to take the testimony in this case, and submit their findings of facts to the parties in this case and to the Court, and that the decree of this Court based upon said findings of fact should be entered as the decree of this court in this action with the same force and effect as if the case had been regularly tried before the Court.

That said Referees have filed their report and findings of fact in the Court, which are agreed to by all of said parties, and accepted and approved by this Court, from which findings of fact, the Court made its conclusions of law, - That each of said parties are entitled to the waters as of the amounts and dates specified in said findings of fact.

Now therefore this cause coming regularly on this 10th day of October, 1904 for the entry of Judgment, Alfred Budge Esq., appearing for the plaintiff and John A. Bagley Esq., appearing for the Defendants.

IT is ordered adjudged and decreed that the several parties to this action are entitled to and are hereby decreed, the waters of Worm Creek, and its tributaries, a stream in Bear Lake County. State of Idaho, as of the following amounts and dates to-wit:

Name	cf	Amount	Of Date.	Name	cf	Amount	Of Date
1. E. J. Haddock	0.20	10 inches	May 1st, 1868	18. H. C. Nelson	0.07	3 1/2 inches	May 1st, 1868
2. O. C. Dunford	0.08	4 "	" 1" 1869	19. D. A. Krogue	0.06	3 "	May 1st, 1869
3. E. J. Haddock	0.03	1 1/2 "	" 1" 1870	20. Peter Greenhalgh	0.40	" "	1" 1870
4. D. A. Nelson	0.09	4 1/2 "	" 1" 1870	21. E. J. Haddock	0.05	2 1/2 "	" 1" 1871
5. Peter Greenhalgh	0.12	6 "	" 1" 1877	22. D. A. Nelson	0.12	6 - 3/8 "	" 1" 1880
6. D. A. Krogue	0.32	16 "	" 1" 1883	23. James A. Nelson	0.09	" "	" 1" 1885
7. Levi H. Long	0.26	13 "	" 1" 1883	24. O. C. Dunford	0.04	2 "	" 1" 1885
8. E. J. Haddock	0.02	1 "	" 1" 1888	25. Peter Greenhalgh	4.00	" "	" 1" 1890
9. D. A. Nelson	0.16	8 - 3/8 "	" 1" 1891	26. John Q. Welker	0.07	3 1/2 "	" 1" 1891
10. James A. Nelson	0.31	15 1/2 "	" 1" 1892	27. D. A. Nelson	0.14	6 - 7/10 "	" 1" 1892
11. D. A. Nelson	0.36	19 1/2 "	" 1" 1893	28. Jacob Nelson	0.15	7 3/4 "	" 1" 1893
12. D. A. Nelson	0.13	6 1/2 "	" 1" 1894	29. Jacob Welker	0.16	8 1/4 "	" 1" 1894
13. Levi H. Long	1.20	60 "	" 1" 1894	30. D. A. Nelson	0.17	8 3/4 "	" 1" 1895
14. Jacob Welker	0.10	5 "	" 1" 1895	31. E. J. Haddock	0.02	1 "	" 1" 1895
15. Peter Rasmussen	0.06	3 "	" 1" 1895	32. John Q. Welker	0.07	3 1/2 "	" 1" 1895
16. D. A. Nelson	0.07	3 1/2 "	" 1" 1896	33. Levi H. Long	0.14	7 "	" 1" 1896
17. Fred Jacobsen	0.04	2 "	" 1" 1898	34. Fred Jacobsen	0.12	6 "	" 1" 1901

That an inch of water as mentioned in this decree means a miners inch of water measured under a four inch pressure, or one ~~fourth~~ fiftieth (1/50) of one (1) cubic foot of water per second of time.

Dated this 10th day of October, 1904.

James M. Stevens, Dist. Judge.

OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO.)	PROPOSED
2103 OF WATER RIGHT NOS. 11-1058/1076/1060/)	
1077/1061/1078/1062/1079/1064/1065/1082/)	MEMORANDUM DECISION
1066/1089/1084/1068/1069/1087/1088/1073)	
IN THE NAME OF DEAN WARD AND GRANT HADDOCK)	AND ORDER
)	

This matter was first brought to the attention of the Idaho Department of Water Resources on January 3, 1976 when a letter from Mayo Krogue was received objecting to the change in point of diversion on Worm Creek initiated by Dean Ward and Grant Haddock. This change was made without benefit of the requisite transfer approval. Dean Ward was subsequently advised by the Department that it appeared a transfer would be necessary to legally accomplish the changes he and Grant Haddock were making. In response, personnel from the Department were invited to come and review the changes in the field. Based upon the information provided at that time, it was concluded that no changes which would require a transfer were being made. The conversion from surface to sprinkler irrigation does not necessarily represent a change in the associated water rights. However, the irrigation of previously unirrigated land would require a water right permit. Mayo Krogue and Nolan Krogue responded by filing an affidavit stating that for over forty (40) years all of the water users on Worm Creek have diverted their water at the same diversion located within the NW1/4SW1/4, Sec. 34, Twp. 14S, Rge. 43E, B.M. Mr. Krogue further explained that the ditch that would be used to supply the new gravity sprinkler system was a high water ditch that was located on the property of Ardella Peterson and had not been used for years. Based upon the sworn statement of Mayo and Nolan Krogue, Dean Ward was advised that an application for transfer appeared to be appropriate.

Dean Ward and Grant Haddock responded on April 26, 1977 and application for transfer No. 11-1058/etc. was filed with the Department of Water Resources. This application included nineteen rights totaling 2.67 cubic feet per second. Notice of the proposed change was published in the News Examiner in Montpelier, Idaho on May 26 and June 2, 1977. Because of a publication error, a corrected

notice was advertised on June 23 and 30, 1977. Protests subsequently were received during the protest period from Ardella Peterson, Mayo Krogue, James E. Payne, and Arlen C. Wilkes.

A conference in the matter was held in the Bear Lake County Courthouse on September 1, 1977. The applicants were present and represented by Jay Kohler, Attorney at Law. Protestant Ardella Peterson was represented by Clyde Nelson, Attorney at Law. Protestant Mayo Krogue was represented by Leonard Kingsford, Attorney at Law. All others were without legal counsel. During the informal discussion of the matter several objections emerged.

1) The flow of water in Worm Creek is normally inadequate and has consequently been used in rotation. The protestants held that they would be injured if the applicants are permitted to separate water from the normal rotation.

2) The moving of water to the new point of diversion will cause unreasonable loss to other water users because of the increased time required to resoak the ditch.

3) Applicants plan to use a ditch which crosses Ardella Peterson's (Beck) property without first securing an easement from her.

4) The applicants do not have the necessary possessory interest in the water rights they are attempting to transfer.

5) The transfer will result in an expansion of the use of the original right.

When no agreement to resolve the objections could be reached Attorney Leonard Kingsford requested that a formal hearing be held at a later date. A hearing was scheduled for June 8, 1978. The applicants and protestants had the same legal representation they had at the previous conference. After review of the issues the parties requested an additional continuance to allow time to request a readjudication to determine the water rights on Worm Creek.

Judicial Decree.

3) Applicant's Exhibit No. 2 - a general sketch showing ditches, roads, lands of applicants and protestants.

4) Hearing tapes No. 1 through 5.

After reviewing the evidence and testimony presented at this hearing and based upon his understanding of the law, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1) On October 10, 1904, District Judge James M. Stevens decreed the waters of Worm Creek, Bear Lake County, Idaho to thirty-four (34) parties. The rights decreed totalled 373.58 miner's inches, 7.4716 cubic feet per second but were only defined by name, amount, and priority date.

2) In June, 1959, Dean Ward, Grant Haddock, Mayo Krogue and James Payne established the present rotation of Worm Creek water. The rotation usually lasts about one and one-half months during the irrigation season.

3) The ditch which crosses protestant Ardella Peterson's property, labeled No. 5 on applicant's exhibit No. 2, washed out when she was a child but was reconstructed by Utah Power and Light when they constructed a power line through that area. Mrs. Peterson has refused to grant permission to use the ditch through her property.

4) The earliest priority date established by the case of Haddock vs Thornock is May 1, 1868. During the summer months of August and September there is normally only enough water to supply the rights with a priority earlier than 1890. During these periods, a 28-day rotation between the parties perviously named is started with Grant Haddock getting water for five and one-half (5 1/2) days, Mayo Krogue for nine (9) days, Dean Ward for ten and onehalf (10 1/2) days and James Payne three (3) days.

5) The intake structure for a gravity irrigation system was constructed by the applicants in 1976. This structure can be used only when water is conveyed into ditch No. 5 illustrated in applicant's exhibit No. 2.

6) The distance from the diversion into ditch 5 is about one mile above the next downstream diversion.

7) The successors in interest to the water entitlement granted by Judge Stevens in 1904 is not clear because of the vagueness of the decree and

1) The decree handed down by the court in the case of Haddock vs Thernock does not contain the elements necessary to define the water rights for the water users on Worm Creek. A watermaster could not be elected and charged with the distribution of waters of Worm Creek without an adjudication to further define the existing water rights.

2) The ownership of the particular rights claimed by the applicants cannot be confirmed without a court adjudication.

3) The continuation of the established rotation is in the local public interest and may have become an element of the respective water rights and therefore, cannot be abandoned or changed without unanimous agreement of the parties.

4) The applicant's have water rights on Worm Creek, and although not clearly defined, are entitled to change the point of diversion and/or place of use of these rights with certain limitations to protect the rights of others.

5) Although the applicant does not have a written easement across another's land, that may be obtained through condemnation or a right-of-way may already exist due to the past use of the ditch.

6) Failure to appear at the hearing is cause for setting aside a protest.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the protest of Arden Wilkes be set aside for failure to appear and that Application for Transfer No. 2103 of Water Right Nos. 11-1058/1076/1060/1077/1061/1078/1062/1079/1064/1065/1082/1066 /1089/1084/1068/1069/1087/1088/1073 is APPROVED subject to the following conditions:

1) Only those lands which were regularly irrigated prior to 1975 may be irrigated. If other lands are to be irrigated, a water right permit could allow irrigation of these prior to June 5 of each year or the start of the rotation.

2) The established schedule of rotation shall be continued except the applicants shall release the water a sufficient amount of time before the end of the rotation period so the water will reach the point of diversion of the person next in line to use the water at the beginning of their period of use.

3) Approval of this application does not represent a finding of possessory interest in the waters of Worm Creek. The available evidence and testimony indicates that the applicants have beneficially used the waters of Worm Creek. The point of diversion of any rights the applicants possess, as may in the future be confirmed by court action, is hereby changed pursuant to this application for transfer of water right and the limitations herein stated.

4) Approval does not grant access or easement to use the lands of another person.

Dated this 11 day of September, 1984.


BOBBY D. FLEENOR
Hearing Officer

2103

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

OCT 24 1984

Department of Water Resources
Eastern District Office

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF
APPLICATION FOR TRANSFER NO. 2103 OF WATER RIGHT
NOS. 11-1058, ETC. IN THE NAME OF DEAN WARD AND
GRANT HADDOCK

ORDER ADOPTING
PROPOSED MEMORANDUM
DECISION AND ORDER

WHEREAS, A. Kenneth Dunn, Director of the Department of Water Resources having issued and served a copy on the parties on September 11, 1984, a Proposed Memorandum Decision and Order in the above-captioned matter, pursuant to Idaho Code, Section 67-5211; and,

WHEREAS, on October 15, 1984, which is 34 days after the date of service of the proposed decision, an objection to the proposed decision was received from protestant Ardella Peterson; and,

WHEREAS, exceptions to be considered must be received on or before the 15th day following the service of the proposed decision; and,

WHEREAS, no timely exceptions were received to the Proposed Memorandum Decision and Order;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order.

Dated this 18th day of October, 1984.



A. KENNETH DUNN

Director

Preliminary Engineer's Cost Estimate
Black Bear Resort
Phase 1 Construction

Date: 6/24/2010
By: L. Anderson
CLE Proj No.: 848-0401

This estimate is based upon the Preliminary Plat Phase I drawing dated February 8, 2010. Cache-Landmark Engineering has no control over costs or the price of labor, equipment, materials or the contractors method of pricing. Cache-Landmark Engineering makes no warranty, expressed or implied, as to the accuracy of such opinion as compared to bid or actual costs.

A. PHASE ONE OFF-SITE IMPROVEMENTS				
Description	Quantity	Units	Unit Cost	Sub-Total
Roadwork				
Clear and Grub / Strip Topsoil	8,500	LF	\$ 2.00	\$ 17,000
Cut (Rough Estimate of Quantity)	100,000	CY	\$ 1.00	\$ 100,000
Erosion Control	1	LS	\$ 25,000.00	\$ 25,000
12" Import Fill (Granular Borrow "Pit Run")	26,000	LF	\$ 2.00	\$ 52,000
4" Road Base	26,000	LF	\$ 3.00	\$ 78,000
3" Asphalt	1,100	LF	\$ 36.00	\$ 39,600
Subtotal Roadwork				\$ 311,600
Contingency (10%)				\$ 31,160
Total Roadwork				\$ 342,760
Storm Sewer and Detention				
Storm Drain Infrastructure	1	LS	\$ 100,000.00	\$ 100,000
Subtotal Storm Sewer				\$ 100,000
Contingency (10%)				\$ 10,000
Total Storm Sewer				\$ 110,000
Extensions				
Power Conduit Trenching & backfill (w/out conduit)	20,100	LF	\$ 5.00	\$ 100,500
4" Schedule 40 conduit (raw material)	20,100	LF	\$ 4.00	\$ 80,400
Power Substation	1	LS	\$ 100,000.00	\$ 100,000
Subtotal Extensions				\$ 280,900
Contingency (10%)				\$ 28,090
Total Extensions				\$ 308,990
Water Service				
8" C900 DR-14 Water Line	3,800	LF	\$ 37.00	\$ 140,600
10" C900 DR-14 Water Line	3,900	LF	\$ 40.00	\$ 156,000
18" C900 DR-14 Water Line	1,200	LF	\$ 52.00	\$ 62,400
8" RSGV (in-line)	5	EA	\$ 1,250.00	\$ 6,250
10" RSGV (in-line)	5	EA	\$ 2,000.00	\$ 10,000
18" RSGV (in-line)	2	EA	\$ 4,000.00	\$ 8,000
1" Water Service	30	EA	\$ 1,500.00	\$ 45,000
Water Reservoir (1 Million Gallon)	1	LS	\$ 900,000.00	\$ 900,000
Test Wells	2	EA	\$ 60,000.00	\$ 120,000
Water Well and Pump house	2	EA	\$ 500,000.00	\$ 1,000,000
Subtotal Water Service				\$ 2,448,250
Contingency (10%)				\$ 244,825
Total Water Service				\$ 2,693,075
Sanitary Sewer				
8" PVC Sanitary Sewer Line	1,220	LF	\$ 40.00	\$ 48,800
10" PVC Sanitary Sewer Line	460	LF	\$ 44.00	\$ 20,240
12" PVC Sanitary Sewer Line	520	LF	\$ 48.00	\$ 24,960
4" Services	30	EA	\$ 1,000.00	\$ 30,000
4' Diameter Sanitary Sewer Manhole	12	EA	\$ 3,000.00	\$ 36,000
5' Diameter Sanitary Sewer Manhole	1	EA	\$ 3,500.00	\$ 3,500
Subtotal Sanitary Sewer				\$ 163,500
Contingency (10%)				\$ 16,350
Total Sanitary Sewer				\$ 179,850
PHASE ONE OFF-SITE IMPROVEMENT TOTAL				\$ 3,634,675

B. PHASE ONE - GOLF COURSE RESIDENTIAL LOTS (112 LOTS)

September 23, 2008

State of Idaho
Department of Water Resources
322 E. Front Street
Boise, Idaho 83720-0098

Re: water right # 11-7582
Filed by the Retreat at Bear Lake, LLC
dba Black Bear Resort

I am protesting the drilling and use of water from Worm Creek by Black Bear Mountain to protect the irrigation water for my farm. I am protesting for myself only.

I have used water from Worm Creek to irrigate part of my farm. Worm Creek originates from springs in Horse Flats area which is located in the middle of Black Bear Mountain Resort and picks up water as it comes down the canyon. If wells are drilled in this area, it will permanently dry up the springs. The past drought has taken its toll on the amount of water available and if more water is taken from the ground there will be nothing coming down the canyon for the 4 farmers who rely on that water to grow crops.

Over the past 35 years there have only been 4 farmers who used and shared all of this water: Dean Ward, Elmo Krogue, Grant Haddock and Gary Payne. Those of us sharing this water in the Krogue-Payne Ditch from Worm Creek are: Elmo Krogue, and myself-Gary Payne. Water for these fields has been used since 1868. This water use and rotation has been in effect since a decision of the IDWR October 18, 1984. I currently have rotation rights passed from my Dad when I bought the land.

I have a Statutory Claim to water rights #11-7589 for farm #1514 Tract 492 as filed with Dept of Agriculture.



Gary J. Payne
2949 W Wapoot St
Meridian, Idaho 83646

January 7, 2009

RE: Protest for The Retreat at Bear Lake Pre-Hearing Conference on January 26, 2009
for Permit #11-7582

I have claim #11-7589 for farm #1514 T1718 F.N2NE 34-14-43 55 Acres: T1728
F.SWSE 27-14-43 12 acres: T3898 F.NWNW 35-14-43 1.5 acres.
Re: Issue # 2

I have serious concerns about the drilling for water. I met with Mr. Brad Auger at his office in Logan on October 22, 2008. Our farm water comes from Worm Creek. We explained our concerns to him. Mr. Auger explained that they will be drilling far below the level of the aquifer for Worm Creek and going deeper than the water supplying Worm Creek and on a different aquifer, so that it will not possibly impact the supply to Worm Creek.

The rock formations are very slanted in that area and water seeks the lowest level in the ground, so my concern is that draining water from a lower level will cause the aquifer that feeds Worm Creek Lake at Approximately 9000 ft above sea level to dry up by having the water from the underground reservoir below it taken out farther down the mountain. Worm Creek Lake is about 5 miles West of The Retreat and runs past it and on down the canyon to the four farms that use all the water from Worm Creek. It is my understanding that all the springs in this area are fed by the same source, so using from one source will naturally lower the amount available in another in that area. Drilling could possibly decrease the pressure in the aquifer that feed the springs.

We left this conference without being convinced that it would not have a serious effect on the water supply for our farm that uses the water from Worm Creek down in the valley. **If drilling for water for The Retreat causes loss of water to Worm Creek we need assurance of some form of compensation or alternate source of water.**

I am willing to meet when possible to work out a resolution to this.
Sincerely,
Gary J. Payne
2940 W. Wapoot St.
Meridian, Id 83646
Ph 208-884-1572
Cell Ph 208-921-0000

From Bear Lake County Book "B" of Judgment page 243

On Oct 10, 1904 District Judge James M Stevens decreed the waters of Worm Creek totaled 373.58 miners inches, 7.4716 cubic feet per second.

An inch of water in this decree means a miner's inch under a 4 inch pressure, or (1/50), one fiftieth of 1 cubic foot per second.