

Law Offices
HOLDEN KIDWELL, HAHN & CRAPO, P.C.

KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
CHARLES A. HOMER
GARY L. MEIKLE
DONALD L. HARRIS
DALE W. STORER
MARIE T. TYLER
FREDERICK J. HAHN, III
KARL R. DECKER
SHAN B. PERRY
DeANNE CASPERSON**
AMELIA A. SHEETS
ROBERT L. HARRIS
DEBORAH S. O'MALLEY

1000 RIVERWALK DRIVE, SUITE 200
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
FACSIMILE (208) 523-9518
E-MAIL KFOSTER@HOLDENLEGAL.COM

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn

**Also Licensed in Missouri & Kansas

September 26, 2006

Shelley W. Keen
Water Rights Supervisor
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

Re: Application for Permit No. 35-13542 (South Interchange Properties, LLC)

Dear Mr. Keen:

We are writing this letter to propose a mitigation plan with respect to the above referenced Application for Permit. While we have grave concerns regarding the legality of (1) the use of the transfer tool in connection with an application for permit, and (2) the use of a newer version of the transfer tool without any documented authority for such, we reserve those legal issues and will not comment on them for the purposes of this proposal.

In your letter of April 11, 2006, you focused on the possible use of a portion of Water Right No. 35-7206D for mitigation and indicated 45 acres would need to be dried up to provide sufficient mitigation for the projected negative impacts on the Ashton to Rexburg and Heise to Shelley reaches. Our client would prefer to explore a different alternative.

As we understand the spreadsheets generated in application of the transfer tool, there is a predicted negative impact on the Ashton to Rexburg reach of the Henry's Fork (per the new version of the transfer tool) of up to 5.8 acre feet per trimester by the Spring of 2061, and of up to 4.6 acre feet in the Heise to Shelley reach of the South Fork of the Snake River per trimester by the winter of 2035, or a total yearly amount of 13.8 acre feet by the winter of 2041. Assuming those to be the predicted impacts, our client proposes to address each independently with water rights other than 35-7206D.

First, with respect to the Ashton to Rexburg reach of the Henry's Fork, applicant controls an ownership interest in land near Ashton, Idaho, on a small tributary to the Henry's Fork called

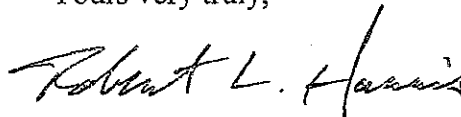
Blue Creek. There is 141.2 acres of irrigated land to which 3 water rights have been recommended as appurtenant, 21-2012, 21-2034 and 21-7148. As we understand it, this land is located in an area where the "Consumptive Irrigation Requirement, Field Headgate Requirement and Season of Use" map shows a field headgate requirement of 3.0 acre feet per acre. Applicant proposes to dry up enough of the irrigated acres under the three referenced rights to permit the resulting non-diversions from Blue Creek to flow into Henry's Fork to offset the model predicted depletions in the Ashton to Rexburg reach of Henry's Fork from the pumping of the well under 35-13542. If we concede that amount will reach 5.8 acre feet per trimester by 2061, that would be 17.4 acre feet per year by that time. By ceasing to irrigate up to 5.8 acres of the land, diversions from Blue Creek will be reduced by at least three acre feet per acre or up to 17.4 acre feet per year. Applicant proposes to do the drying up of acreage, beginning with 0.4 acres, the first year, and reach 5.8 acres in 2061 or 2062, as shown on the spreadsheet.

Second, with respect to the Heise to Shelley reach of the South Fork, Applicant controls an ownership interest in 130 shares of stock in Palisades Water Users, Inc. Each share represents 1 acre foot of storage space in Palisades Reservoir. Although the amount of actual water available in any given season depends on the percentage of fill, and there were seasons during the 2000 to 2005 drouth period when the reservoir filled only a portion of the space, there has never been a time when there was not significantly more water accruing to the space represented by these 130 shares than would be needed to provide mitigation for the predicted negative impact on the South Fork of Snake River in the Heise to Shelley reach. So, applicant proposes to commit sufficient water from this storage right each season to mitigate the predicted negative impacts as shown on the spreadsheet. That appears to be 2.5 acre feet the first year, increasing up to 13.8 acre feet per year, beginning in about 2041 or 2042.

We will undoubtedly need your direction on exactly how IDWR wants these proposals to be implemented and monitored. The applicant is certainly willing to comply with any reasonable proof and reporting requirements.

We will look forward to hearing further from you.

Yours very truly,



For Kent W. Foster

	Ashton to Rexburg		Heise to Shelley	
SPR 2006	0.1		0.4	
SUM 2006	0.4		0.9	
WIN 2006	0.7	1.3	1.3	2.5
SPR 2007	1.0		1.7	
SUM 2007	1.3		2.0	
WIN 2007	1.5	3.8	2.3	6.0
SPR 2008	1.7		2.5	
SUM 2008	1.9		2.7	
WIN 2008	2.1	5.8	2.8	8.0
SPR 2009	2.3		3.0	
SUM 2009	2.4		3.1	
WIN 2009	2.5	7.2	3.2	9.2
SPR 2010	2.6		3.3	
SUM 2010	2.8		3.3	
WIN 2010	2.9	8.2	3.4	10.0
SPR 2011	3.0		3.5	
SUM 2011	3.0		3.5	
WIN 2011	3.1	9.1	3.6	10.6
SPR 2012	3.2		3.6	
SUM 2012	3.3		3.7	
WIN 2012	3.4	9.9	3.7	11.0
SPR 2013	3.5		3.8	
SUM 2013	3.5		3.8	
WIN 2013	3.6	10.6	3.8	11.4
SPR 2014	3.7		3.9	
SUM 2014	3.7		3.9	
WIN 2014	3.8	11.2	3.9	11.7
SPR 2015	3.9		4.0	
SUM 2015	3.9		4.0	
WIN 2015	4.0	11.7	4.0	12.0
SPR 2016	4.0		4.0	
SUM 2016	4.1		4.1	
WIN 2016	4.1	12.3	4.1	12.2
SPR 2017	4.2		4.1	
SUM 2017	4.2		4.1	
WIN 2017	4.3	12.7	4.1	12.4
SPR 2018	4.3		4.2	
SUM 2018	4.4		4.2	
WIN 2018	4.4	13.1	4.2	12.5
SPR 2019	4.5		4.2	
SUM 2019	4.5		4.2	
WIN 2019	4.5	13.5	4.2	12.7
SPR 2020	4.6		4.2	
SUM 2020	4.6		4.3	
WIN 2020	4.7	13.8	4.3	12.8
SPR 2021	4.7		4.3	
SUM 2021	4.7		4.3	
WIN 2021	4.8	14.2	4.3	12.9
SPR 2022	4.8		4.3	
SUM 2022	4.8		4.3	
WIN 2022	4.8	14.4	4.3	13.0

SPR 2023	4.9		4.4	
SUM 2023	4.9		4.4	
WIN 2023	4.9	14.7	4.4	13.1
SPR 2024	5.0		4.4	
SUM 2024	5.0		4.4	
WIN 2024	5.0	14.9	4.4	13.2
SPR 2025	5.0		4.4	
SUM 2025	5.1		4.4	
WIN 2025	5.1	15.2	4.4	13.2
SPR 2026	5.1		4.4	
SUM 2026	5.1		4.4	
WIN 2026	5.1	15.4	4.4	13.3
SPR 2027	5.2		4.4	
SUM 2027	5.2		4.5	
WIN 2027	5.2	15.5	4.5	13.4
SPR 2028	5.2		4.5	
SUM 2028	5.2		4.5	
WIN 2028	5.2	15.7	4.5	13.4
SPR 2029	5.3		4.5	
SUM 2029	5.3		4.5	
WIN 2029	5.3	15.8	4.5	13.5
SPR 2030	5.3		4.5	
SUM 2030	5.3		4.5	
WIN 2030	5.3	16.0	4.5	13.5
SPR 2031	5.4		4.5	
SUM 2031	5.4		4.5	
WIN 2031	5.4	16.1	4.5	13.5
SPR 2032	5.4		4.5	
SUM 2032	5.4		4.5	
WIN 2032	5.4	16.2	4.5	13.6
SPR 2033	5.4		4.5	
SUM 2033	5.4		4.5	
WIN 2033	5.4	16.3	4.5	13.6
SPR 2034	5.5		4.5	
SUM 2034	5.5		4.5	
WIN 2034	5.5	16.4	4.5	13.6
SPR 2035	5.5		4.5	
SUM 2035	5.5		4.5	
WIN 2035	5.5	16.5	4.6	13.6
SPR 2036	5.5		4.6	
SUM 2036	5.5		4.6	
WIN 2036	5.5	16.5	4.6	13.7
SPR 2037	5.5		4.6	
SUM 2037	5.5		4.6	
WIN 2037	5.5	16.6	4.6	13.7
SPR 2038	5.6		4.6	
SUM 2038	5.6		4.6	
WIN 2038	5.6	16.7	4.6	13.7
SPR 2039	5.6		4.6	
SUM 2039	5.6		4.6	
WIN 2039	5.6	16.7	4.6	13.7
SPR 2040	5.6		4.6	

SUM 2040	5.6		4.6	
WIN 2040	5.6	16.8	4.6	13.7
SPR 2041	5.6		4.6	
SUM 2041	5.6		4.6	
WIN 2041	5.6	16.8	4.6	13.8
SPR 2042	5.6		4.6	
SUM 2042	5.6		4.6	
WIN 2042	5.6	16.9	4.6	13.8
SPR 2043	5.6		4.6	
SUM 2043	5.6		4.6	
WIN 2043	5.6	16.9	4.6	13.8
SPR 2044	5.6		4.6	
SUM 2044	5.7		4.6	
WIN 2044	5.7	17.0	4.6	13.8
SPR 2045	5.7		4.6	
SUM 2045	5.7		4.6	
WIN 2045	5.7	17.0	4.6	13.8
SPR 2046	5.7		4.6	
SUM 2046	5.7		4.6	
WIN 2046	5.7	17.0	4.6	13.8
SPR 2047	5.7		4.6	
SUM 2047	5.7		4.6	
WIN 2047	5.7	17.0	4.6	13.8
SPR 2048	5.7		4.6	
SUM 2048	5.7		4.6	
WIN 2048	5.7	17.1	4.6	13.8
SPR 2049	5.7		4.6	
SUM 2049	5.7		4.6	
WIN 2049	5.7	17.1	4.6	13.8
SPR 2050	5.7		4.6	
SUM 2050	5.7		4.6	
WIN 2050	5.7	17.1	4.6	13.8
SPR 2051	5.7		4.6	
SUM 2051	5.7		4.6	
WIN 2051	5.7	17.1	4.6	13.8
SPR 2052	5.7		4.6	
SUM 2052	5.7		4.6	
WIN 2052	5.7	17.1	4.6	13.8
SPR 2053	5.7		4.6	
SUM 2053	5.7		4.6	
WIN 2053	5.7	17.2	4.6	13.8
SPR 2054	5.7		4.6	
SUM 2054	5.7		4.6	
WIN 2054	5.7	17.2	4.6	13.9
SPR 2055	5.7		4.6	
SUM 2055	5.7		4.6	
WIN 2055	5.7	17.2	4.6	13.9
SPR 2056	5.7		4.6	
SUM 2056	5.7		4.6	
WIN 2056	5.7	17.2	4.6	13.9
SPR 2057	5.7		4.6	
SUM 2057	5.7		4.6	

WIN 2057	5.7	17.2	4.6	13.9
SPR 2058	5.7		4.6	
SUM 2058	5.7		4.6	
WIN 2058	5.7	17.2	4.6	13.9
SPR 2059	5.7		4.6	
SUM 2059	5.7		4.6	
WIN 2059	5.7	17.2	4.6	13.9
SPR 2060	5.7		4.6	
SUM 2060	5.7		4.6	
WIN 2060	5.7	17.2	4.6	13.9
SPR 2061	5.8		4.6	
SUM 2061	5.8		4.6	
WIN 2061	5.8	17.3	4.6	13.9
SPR 2062	5.8		4.6	
SUM 2062	5.8		4.6	
WIN 2062	5.8	17.3	4.6	13.9
SPR 2063	5.8		4.6	
SUM 2063	5.8		4.6	
WIN 2063	5.8	17.3	4.6	13.9
SPR 2064	5.8		4.6	
SUM 2064	5.8		4.6	
WIN 2064	5.8	17.3	4.6	13.9
SPR 2065	5.8		4.6	
SUM 2065	5.8		4.6	
WIN 2065	5.8	17.3	4.6	13.9
SPR 2066	5.8		4.6	
SUM 2066	5.8		4.6	
WIN 2066	5.8	17.3	4.6	13.9
SPR 2067	5.8		4.6	
SUM 2067	5.8		4.6	
WIN 2067	5.8	17.3	4.6	13.9
SPR 2068	5.8		4.6	
SUM 2068	5.8		4.6	
WIN 2068	5.8	17.3	4.6	13.9
SPR 2069	5.8		4.6	
SUM 2069	5.8		4.6	
WIN 2069	5.8	17.3	4.6	13.9
SPR 2070	5.8		4.6	
SUM 2070	5.8		4.6	
WIN 2070	5.8	17.3	4.6	13.9
SPR 2071	5.8		4.6	
SUM 2071	5.8		4.6	
WIN 2071	5.8	17.3	4.6	13.9
SPR 2072	5.8		4.6	
SUM 2072	5.8		4.6	
WIN 2072	5.8	17.3	4.6	13.9
SPR 2073	5.8		4.6	
SUM 2073	5.8		4.6	
WIN 2073	5.8	17.3	4.6	13.9
SPR 2074	5.8		4.6	
SUM 2074	5.8		4.6	
WIN 2074	5.8	17.3	4.6	13.9

SPR 2075	5.8		4.6	
SUM 2075	5.8		4.6	
WIN 2075	5.8	17.3	4.6	13.9
SPR 2076	5.8		4.6	
SUM 2076	5.8		4.6	
WIN 2076	5.8	17.3	4.6	13.9
SPR 2077	5.8		4.6	
SUM 2077	5.8		4.6	
WIN 2077	5.8	17.3	4.6	13.9
SPR 2078	5.8		4.6	
SUM 2078	5.8		4.6	
WIN 2078	5.8	17.3	4.6	13.9
SPR 2079	5.8		4.6	
SUM 2079	5.8		4.6	
WIN 2079	5.8	17.3	4.6	13.9
SPR 2080	5.8		4.6	
SUM 2080	5.8		4.6	
WIN 2080	5.8	17.3	4.6	13.9
SPR 2081	5.8		4.6	
SUM 2081	5.8		4.6	
WIN 2081	5.8	17.3	4.6	13.9
SPR 2082	5.8		4.6	
SUM 2082	5.8		4.6	
WIN 2082	5.8	17.3	4.6	13.9
SPR 2083	5.8		4.6	
SUM 2083	5.8		4.6	
WIN 2083	5.8	17.3	4.6	13.9
SPR 2084	5.8		4.6	
SUM 2084	5.8		4.6	
WIN 2084	5.8	17.3	4.6	13.9
SPR 2085	5.8		4.6	
SUM 2085	5.8		4.6	
WIN 2085	5.8	17.3	4.6	13.9
SPR 2086	5.8		4.6	
SUM 2086	5.8		4.6	
WIN 2086	5.8	17.3	4.6	13.9
SPR 2087	5.8		4.6	
SUM 2087	5.8		4.6	
WIN 2087	5.8	17.3	4.6	13.9
SPR 2088	5.8		4.6	
SUM 2088	5.8		4.6	
WIN 2088	5.8	17.3	4.6	13.9
SPR 2089	5.8		4.6	
SUM 2089	5.8		4.6	
WIN 2089	5.8	17.4	4.6	13.9
SPR 2090	5.8		4.6	
SUM 2090	5.8		4.6	
WIN 2090	5.8	17.4	4.6	13.9
SPR 2091	5.8		4.6	
SUM 2091	5.8		4.6	
WIN 2091	5.8	17.4	4.6	13.9
SPR 2092	5.8		4.6	

SUM 2092	5.8		4.6	
WIN 2092	5.8	17.4	4.6	13.9
SPR 2093	5.8		4.6	
SUM 2093	5.8		4.6	
WIN 2093	5.8	17.4	4.6	13.9
SPR 2094	5.8		4.6	
SUM 2094	5.8		4.6	
WIN 2094	5.8	17.4	4.6	13.9
SPR 2095	5.8		4.6	
SUM 2095	5.8		4.6	
WIN 2095	5.8	17.4	4.6	13.9
SPR 2096	5.8		4.6	
SUM 2096	5.8		4.6	
WIN 2096	5.8	17.4	4.6	13.9
SPR 2097	5.8		4.6	
SUM 2097	5.8		4.6	
WIN 2097	5.8	17.4	4.6	13.9
SPR 2098	5.8		4.6	
SUM 2098	5.8		4.6	
WIN 2098	5.8	17.4	4.6	13.9
SPR 2099	5.8		4.6	
SUM 2099	5.8		4.6	
WIN 2099	5.8	17.4	4.6	13.9
SPR 2100	5.8		4.6	
SUM 2100	5.8		4.6	
WIN 2100	5.8	17.4	4.6	13.9
SPR 2101	5.8		4.6	
SUM 2101	5.8		4.6	
WIN 2101	5.8	17.4	4.6	13.9
SPR 2102	5.8		4.6	
SUM 2102	5.8		4.6	
WIN 2102	5.8	17.4	4.6	13.9
SPR 2103	5.8		4.6	
SUM 2103	5.8		4.6	
WIN 2103	5.8	17.4	4.6	13.9
SPR 2104	5.8		4.6	
SUM 2104	5.8		4.6	
WIN 2104	5.8	17.4	4.6	13.9
SPR 2105	5.8		4.6	
SUM 2105	5.8		4.6	
WIN 2105	5.8	17.4	4.6	13.9
SPR 2106	5.8		4.6	
SUM 2106	5.8		4.6	
WIN 2106	5.8	17.4	4.6	13.9
SPR 2107	5.8		4.6	
SUM 2107	5.8		4.6	
WIN 2107	5.8	17.4	4.6	13.9
SPR 2108	5.8		4.6	
SUM 2108	5.8		4.6	
WIN 2108	5.8	17.4	4.6	13.9
SPR 2109	5.8		4.6	
SUM 2109	5.8		4.6	

WIN 2109	5.8	17.4	4.6	13.9
SPR 2110	5.8		4.6	
SUM 2110	5.8		4.6	
WIN 2110	5.8	17.4	4.6	13.9
SPR 2111	5.8		4.6	
SUM 2111	5.8		4.6	
WIN 2111	5.8	17.4	4.6	13.9
SPR 2112	5.8		4.6	
SUM 2112	5.8		4.6	
WIN 2112	5.8	17.4	4.6	13.9
SPR 2113	5.8		4.6	
SUM 2113	5.8		4.6	
WIN 2113	5.8	17.4	4.6	13.9
SPR 2114	5.8		4.6	
SUM 2114	5.8		4.6	
WIN 2114	5.8	17.4	4.6	13.9
SPR 2115	5.8		4.6	
SUM 2115	5.8		4.6	
WIN 2115	5.8	17.4	4.6	13.9
SPR 2116	5.8		4.6	
SUM 2116	5.8		4.6	
WIN 2116	5.8	17.4	4.6	13.9
SPR 2117	5.8		4.6	
SUM 2117	5.8		4.6	
WIN 2117	5.8	17.4	4.6	13.9
SPR 2118	5.8		4.6	
SUM 2118	5.8		4.6	
WIN 2118	5.8	17.4	4.6	13.9
SPR 2119	5.8		4.6	
SUM 2119	5.8		4.6	
WIN 2119	5.8	17.4	4.6	13.9
SPR 2120	5.8		4.6	
SUM 2120	5.8		4.6	
WIN 2120	5.8	17.4	4.6	13.9
SPR 2121	5.8		4.6	
SUM 2121	5.8		4.6	
WIN 2121	5.8	17.4	4.6	13.9
SPR 2122	5.8		4.6	
SUM 2122	5.8		4.6	