



Holden Kidwell
Hahn & Crapo P.L.L.C.
LAW OFFICES

RECEIVED

FEB 04 2008
1000 Riverwalk Drive, Suite 200
DEPARTMENT OF WATER RESOURCES
BOISE, ID 83720-0005

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com
E-MAIL kfooster@holdenlegal.com

January 30, 2008

WA
Jeff Peppersack
Shelley Keen
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

Dave Carlson
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

Re: Application No. 35-13542 – South Interchange Properties, LLC

Dear Gentlemen:

We are writing this letter to respond to the letter of October 12, from Jeff Peppersack. In that letter, Jeff stated:

The rights of basin 21, from Blue Creek were reviewed for their adequacy for use as mitigation. Staff from our Eastern region office have indicated that the rights are generally cut in April each year. The Department will need additional information to support the use of those rights, or alternative rights, as adequate mitigation for the effects in the Ashton to Rexburg reach of the river.

We obtained 11 years of delivery records for the three referenced rights (21-2034, 21-2012 and 21-7148). We checked with Tony Olenichak at the Eastern Region office, and the numbers we used are those he told us were the correct ones. We have attached a spreadsheet showing the days water was available under rights Nos. 21-2034 and 21-2012 for each irrigation season, 1997 through 2007. We have ignored Right No. 21-7148, because it is a storage right for 5.54 acre feet per year only. The spreadsheet also shows the number of acre feet which would therefore have been available each of the 11 seasons from the two natural flow rights. The highest year, as you can see, was 1997, with an available 1,068 acre feet under the two rights. The lowest was 2004 with 132 acre feet, and the average for the 11 years (one of the worst drouth periods of record) was 470 acre feet.

If the enclosed precipitation deficit sheet is the correct one to use to determine consumptive use for the 141.2 acres served by the three listed water rights, it appears the approximate consumptive use of water on this land to provide pasture grass for grazing would be

Established in 1896

about 1.74 acre feet per acre. There has certainly been an average of more than enough water to supply the consumptive needs for 141.2 acres. Even if the field headgate requirement is 3 acre feet per acre, the average of water available under the existing rights has been more than enough to supply that need.

In actual fact, the owners of the 141.2 acres specified under the relevant water rights have historically rented Fremont-Madison storage water to supplement the supply during such times of any irrigation season when the supply under such rights is short. The drying up of the acres as our mitigation proposal sets out will result in a reduction of the consumptive loss that would otherwise arguably occur in the Ashton to Rexburg reach. We do not see any information in the available records to support the concerns apparently expressed by the Eastern Region staff. It appears to us there is usually adequate water available under the referenced rights to provide for mitigation of the rather minuscule predicted effects in the Ashton to Rexburg reach of the river.

Since it is apparently the consumptive loss we need to replace, we have revised the acreages we are offering to dry up to replace such loss. Since the transfer tool predicted consumptive loss in the Ashton to Rexburg reach beginning with 1.3 acre feet per year the first year, and reaching 17.4 acre feet per year by year 83, we propose to begin by drying up approximately 1 acre of land in the first year and then increasing the acreages taken out of production in accordance with the chart we submitted until the 83rd year, when the acreage taken out of production should be a full 10 acres to offset the predicted consumptive loss.

We are still waiting for written confirmation from the record owner of the real property to which the three referenced rights are appurtenant that the acreage will be dried up as specified in the mitigation proposal. In addition, we are still waiting for written confirmation from the holder of a Stock Certificate for shares of stock in Palisades Water Users, Inc., that the required amount of storage water will be released each year from Palisades Reservoir to flow down Snake River to mitigate the theoretical losses in the Heise to near Shelley reach of the river. In the meantime, please review the attached information regarding availability of the Blue Creek water and let us know if you have any questions.

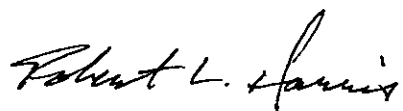
We will very much appreciate issuance of the permit at the earliest possible opportunity. Thank you for your continued assistance.

Idaho Department of Water Resources

January 30, 2008

Page 3 of 3

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Harris". The signature is written in a cursive style with a large, looping initial 'R'.

Robert L. Harris

HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosure

G:\WPDATA\RLH\8527 Smith, Boyd\CORRESPONDENCE\Peppersack, Keen, Carlson ltr 013008.wpd:edv

BLUE CREEK WATER AVAILABILITY

	21-2034 (Jan. 18, 1909 priority)			Days Available	AF Available	21-2012 (June 1, 1973 priority)			Days Available	AF Available	TOTAL DAYS AVAILABLE	TOTAL AF AVAILABLE		
WATER YEAR	AVAILABILITY PERIOD					AVAILABILITY PERIOD								
1997	April 1 through July 27, 1997			180	571	April 1 through July 20, 1997			132	497	312	1068		
	July 29 through August 21, 1997					July 30 through August 7, 1997								
	Sept. 17, 1997					August 9 through August 20, 1997								
	Sept. 24 through October 30, 1997													
1998	April 1 through July 18, 1998			144	457	April 1 through July 13, 1998			104	392	248	849		
	Sept. 18, 1998													
	Sept. 27 through October 30, 1998													
1999	April 1 through July 22, 1999			129	409	April 1 through July 12, 1999			102	384	231	793		
	Oct. 14 through October 30, 1999													
2000	April 1 through May 18, 2000			90	264	April 1 through May 17, 2000			59	222	149	486		
	May 23 through June 19, 2000					May 25 through June 7, 2000								
	Oct. 16 through Oct. 30, 2000					June 9 through June 13, 2000								
2001	April 1 through April 25, 2001			42	133	April 1 through April 16, 2001			16	60	58	193		
	Oct. 14 through Oct. 30, 2001													
2002	April 1 through May 9, 2001			81	257	None			0	0	81	257		
	May 25 through May 30, 2001													
	June 3 through June 15, 2002													
	October 9 through Oct. 31, 2002													
2003	April 1 through May 5, 2003			68	216	None			0	0	68	216		
	May 9 through May 10, 2003													
	May 30 through June 12, 2003													
	June 16, 2003													
2004	Oct. 15 through Oct. 30, 2003													
	April 1 through April 22, 2004			42	133	None			0	0	42	133		
	June 3, 2004													
	June 14 through June 18, 2004													
Oct. 17 through Oct. 30, 2004														
2005	April 1 through July 1, 2005			114	362	May 21 through May 24, 2005			4	15	118	377		
	Oct. 9 through Oct. 30, 2005													
2006	April 1 through June 27, 2006			120	381	April 20 through May 5, 2006			51	192	171	573		
	Sept. 25 through Sept. 29, 2006					May 21 through June 23, 2006								
	Oct. 5 through Oct. 31, 2006													
2007	April 1 through May 10, 2007			68	216	April 9 through April 11, 2007			3	11	71	227		
	May 17 through May 21, 2007													
	Oct. 8 through Oct. 30, 2007													
				TOTALS									1549	5172

ET Idaho --- Evapotranspiration and Consumptive Irrigation Water Requirements for Idaho

Please send suggestions for improving this site to robison at kimberly dot uidaho dot edu Copyright 2007, University of Idaho.

Ashton (AgriMet --AHTI)

Statistics based on 16 years between 1990 to 2005

For a different land cover or crop click on the above link.

You can highlight this table and copy via the clipboard to a Microsoft Excel or OpenOffice spreadsheet to plot or otherwise work with this data.

Grass Pasture - low management

Precipitation Deficit [\(Click here for a graph\)](#)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Growing Season ^a	Annual
Mean	mm/day												mm	
Monthly ^b	-0.15	0.07	0.25	0.52	2.03	3.48	4.34	4.40	2.80	0.31	-0.40	-0.21	531	536
15-Day Moving Average ^c	-0.18	0.04	0.28	0.48	2.07	3.50	4.33	4.30	2.78	0.38	-0.45	-0.21		
7-Day Moving Average ^d	-0.17	0.04	0.27	0.49	2.07	3.45	4.29	4.36	2.80	0.35	-0.46	-0.23		
3-Day Moving Average ^e	-0.15	0.05	0.24	0.49	2.02	3.43	4.32	4.39	2.82	0.32	-0.43	-0.21		
Standard Deviation	mm/day												mm	
Monthly	0.43	0.22	0.25	0.60	1.80	1.24	1.28	0.94	0.55	0.57	0.49	0.49	84	90
15-Day Moving Average	0.43	0.29	0.25	0.57	1.44	1.62	0.96	0.93	1.06	0.84	0.80	0.46		
7-Day Moving Average	0.55	0.45	0.42	0.89	2.01	2.32	1.41	1.27	1.65	1.31	1.09	0.67		
3-Day Moving Average	0.81	0.69	0.72	1.30	2.83	3.19	2.13	1.70	2.46	1.92	1.45	0.91		
20% Exceedance	mm/day												mm	
Monthly	0.03	0.17	0.32	0.61	3.22	4.55	4.71	4.85	3.07	0.56	0.01	0.03	616	641
15-Day Moving Average	0.18	0.31	0.63	1.05	4.09	5.42	5.26	5.50	4.31	1.52	0.40	0.19		
7-Day Moving Average	0.30	0.59	0.87	1.68	4.91	6.13	6.29	6.24	5.57	2.12	0.66	0.33		
3-Day Moving Average	0.48	0.71	1.13	2.19	6.07	7.32	7.86	7.59	7.89	3.13	0.84	0.46		
80% Exceedance	mm/day												mm	
Monthly	-0.51	-0.11	0.10	0.06	0.79	1.99	3.40	3.82	2.30	-0.05	-0.95	-0.59	434	420
15-Day Moving Average	-1.18	-0.24	-0.27	-0.39	-0.37	0.23	2.46	2.40	0.68	-1.71	-1.69	-1.49		
7-Day Moving Average	-1.83	-0.83	-0.78	-1.85	-2.63	-2.86	0.74	1.22	-0.53	-3.90	-3.30	-2.55		
3-Day Moving Average	-3.86	-2.18	-2.06	-3.16	-8.69	-8.95	-3.96	-0.32	-6.08	-6.88	-5.92	-3.72		
Ave Highest ET	mm/day												--	
15-Day Moving Average ^f	0.14	0.26	0.52	1.00	3.33	4.63	5.08	5.04	3.79	1.23	0.25	0.14		
7-Day Moving Average ^g	0.26	0.51	0.78	1.70	4.36	5.81	5.87	5.90	5.15	1.64	0.47	0.28		
3-Day Moving Average ^h	0.40	0.67	1.03	2.17	5.40	6.90	7.23	7.15	6.76	2.36	0.73	0.40		
Ave Lowest ET	mm/day												--	
15-Day Moving Average ^f	-0.43	-0.16	-0.01	-0.02	1.00	2.18	3.74	3.64	1.82	-0.55	-0.99	-0.56		
7-Day Moving Average ^g	-0.83	-0.48	-0.46	-0.83	-0.66	0.21	2.56	2.66	0.50	-1.84	-1.88	-1.15		
3-Day Moving Average ^h	-1.81	-1.26	-1.47	-1.98	-3.87	-3.40	0.29	1.13	-2.81	-3.96	-3.41	-2.25		
Special normal distribution parameters for monthly, seasonal, and annual intervals														--
Skew	-0.66	-1.64	0.28	2.13	0.17	-0.40	-0.16	-0.12	0.83	-0.33	-0.45	-0.44	-0.31	-0.18
Kurtosis	1.23	5.45	1.02	7.64	0.63	2.30	0.99	0.76	3.98	0.84	2.57	0.85	1.97	1.94

^a Growing Season: This is usually the time from green up or planting in the spring to a killing frost or harvest in the fall. It is not applicable for entries without a growing season and will be blank.

^b Mean of the average daily value for month

^c Mean of the fourteen 15-day period averages contained in the month

^d Mean of the twenty three 7-day period averages contained in the month

^e Mean of the twenty seven 3-day period averages contained in the month

^f Mean of the highest/lowest 15-day period average in month

^g Mean of the highest/lowest 7-day period average in month

IRR. SEASON 4/1 - 10/31

PRECIP DEF. 0.52 + 2.03

^h Mean of the highest/lowest 3-day period average in month

Copyright 2007, University of Idaho.

This work and report were prepared by the University of Idaho Research and Extension Center at Kimberly, Idaho under contract with the Idaho Department of Water Resources. Work was supported by funding from IDWR and the Idaho Agricultural Experiment Station and Idaho Engineering Experiment Station. The authors gratefully acknowledge the long-term evapotranspiration data collection and long-standing advice provided by Dr. James L. Wright, USDA-ARS Kimberly (ret.), the more than two decades of high quality agricultural weather data collection by the U.S. Bureau of Reclamation AgriMet system, and the very long-standing, routine data collection by the hundreds of cooperative weather station volunteers across the state who, for more than one-hundred years, have faithfully observed daily air temperature and precipitation.

The citation for the evapotranspiration data used from this site should be: *Allen, Richard G. and Clarence W. Robison, 2006 (Revised 2007). Evapotranspiration and Consumptive Irrigation Water Requirements for Idaho, Research Technical Completion Report, Kimberly Research and Extension Center, University of Idaho, Moscow, ID.*

Questions regarding the data should be addressed to Clarence W. Robison or Richard G. Allen, University of Idaho, Kimberly Research and Extension Center, 3793 North 3600 East, Kimberly, ID 83341. Telephone (208)-423-6610