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September 2, 2008

Gary L. Spackman
Administrator
Water Management Division
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

RECEIVED

SEP 03 2008

DEPARTMENT OF
WATER RESOURCES

Re: *Water Right Nos. 95-9055 and 95-9248 -- Land Application of Treated Effluent*

Dear Mr. Spackman:

I am writing on behalf of my client, Black Rock Utilities, Inc. ("Black Rock"), owner of the above-captioned water right permits. Both permits are for municipal use of ground water. I spoke on Friday with Bob Haynes, and he suggested that I write to you.

The purpose of this letter is to inquire as to whether any amendment of these permits is required in order for Black Rock to apply treated effluent derived from these rights to golf courses within The Club at Black Rock and Black Rock North (collectively the "Project"). As you may recall, The Club at Black Rock is the original project, now nearly complete, and Black Rock North is the adjacent expansion.

Black Rock's Application for Amendment of Permit to Water Right No. 95-9045 (Application No. 74780) is now pending before the Idaho Department of Water Resources ("IDWR" or the "Department"). In our settlement conference last week, the Protestants urged Black Rock to expedite its plans to land apply treated effluent from its municipal ground water rights to golf courses within the Project. This would reduce, but not replace, the need for surface irrigation on that property. Black Rock believes that this is an environmentally sound water conservation practice and wishes to do so. Black Rock has been working with the Idaho Department of Environmental Quality to obtain the appropriate environmental permits. Black Rock previously obtained informal assurance from the Northern Regional Office that no

amendment of its water right permits would be required. I am writing to you seeking confirmation of that conclusion.

I believe the general rule is clear that a municipal provider may land apply treated effluent derived from its municipal water rights to land within its expanding municipal service area without any amendment of its water rights.¹ However, there are special considerations here. Specifically, we wish to confirm that following statements are true, without any amendment of the current permits:

1. The condition on Water Right No. 95-9055 stating "Place of use is within the service area of CAG Investments, LLC." will be understood to apply to the service area of the current owner and municipal provider, Black Rock Utilities, Inc.
2. The place of use for Water Right No. 95-9055 describes an expanding municipal service area and is not limited to the specific forty-acre tracts identified in the Water Permit Report.
3. The condition on Water Right No. 95-9055 prohibiting use of this ground water right for irrigation of land to which surface rights are available does not prohibit land application of treated municipal effluent on such land.
4. The condition on Water Right No. 95-9248 stating "Place of use is within the area served by the public water supply system of The Ridge at Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, and 3 of Section 9, Township 48N, Range 4W." will be understood to apply to the service area of the current owner and municipal provider, Black Rock Utilities, Inc.
5. The place of use for Water Right No. 95-9248 describes an expanding municipal service area and is not limited to the lots identified in the condition quoted above.

I offer the following additional information and explanation.

¹ "The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made." Idaho Code § 42-202(2) (application requirements for municipal service providers). "'Service area' means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. . . . For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued." Idaho Code § 42-202B(9) (definition of "service area").

Water Right No. 95-9055

Water Right No. 95-9055 contains a "condition of approval" stating: "Place of use is within the service area of CAG Investments, LLC." This is listed as Condition No. 6 on the Water Permit Report.

First, Black Rock seeks assurance that there is no need to amend the permit to change the reference in the condition from the former owner, CAG Investments, LLC, to the current owner, Black Rock. The permit was assigned to Black Rock Utilities, Inc. on January 11, 2006 and the assignment was approved by the Department on January 20, 2006.

Second, Black Rock seeks assurance that the referenced condition describes an expanding municipal service area under Idaho Code § 42-202B(9) and is not limited to the forty-acre tracts listed on the water right. This condition appears on the Water Permit Report available on IDWR's website, but not on the original hard copy of the permit (copies of each are enclosed). Apparently the Department initially took the position that the place of use should be described by forty-acre tracts. Indeed, the Water Permit Report continues to list a series of forty-acre tracts, which are no longer representative of Black Rock's current Project boundary (which has expanded to include Black Rock North). An IDWR internal memorandum to the file from Sharla [Curtis?] dated July 25, 2001 states: "The applicant is a development company which does not serve as a typical water provider with a service area. This application is for a specific development and the place of use to be covered by the municipal permit was listed by ¼¼. Therefore, the permit will be issued with the place of use spelled out like the application instead of with a general remark allowing the use within a service area." Apparently, the Department later determined that this was incorrect and added the above-quoted condition describing the place of use based on the municipal provider's service area. Black Rock seeks confirmation that the place of use description set out in the above-quoted condition establishes an expanding municipal service area, that the list of forty-acre tracts on the permit is not controlling, and that there is no need to amend the Permit to describe land within Black Rock North.

Third, Black Rock seeks your advice as to the effect of the condition which states: "The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping." This is listed as Condition No. 5 on the Water Permit Report and Condition No. 7 on the original Permit.

This provision appears to have been inspired by Idaho Code § 67-6537 enacted in 2005. This statute, which is directed to local land use entities, not IDWR, requires land use applicants under the Local Land Use Planning Act to use surface water as the primary source of supply if it is "reasonably available." It is my understanding that the Department does not view this statute

Gary L. Spackman
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as prohibiting land application of municipal effluent from ground water to land where surface water is available, so long as the ground water was first used for in-house culinary purposes. Accordingly, we trust that the referenced condition is intended to prohibit only the use of this ground water right for direct irrigation, and does ^{not} prohibit the environmentally desirable goal of land application of treated effluent.

Water Right No. 95-9248

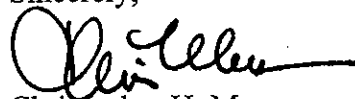
Black Rock also owns Water Right No. 95-9248, which it acquired from the prior owner, The Ridge at Black Rock Bay Homes, Inc., via an Assignment of Permit dated October 11, 2007.²

Unlike Water Right No. 95-9055, this water right does not identify any place of use on its face. Instead, it contains a condition stating: "Place of use is within the area served by the public water supply system of The Ridge at Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, and 3 of Section 9, Township 48N, Range 4W." This is displayed as Condition No. 4 of the Water Permit Report and Condition No. 6 on the original Permit.

Black Rock seeks assurance that the reference to the service area of the former owner, The Ridge at Black Rock Bay Homes, Inc., will be understood to apply to the entire service area of the current owner and municipal provider, Black Rock Utilities, Inc. Black Rock also seeks assurance that the reference to three specific lots does not limit the place of use, and that the municipal service area may change (without need for amendment or transfer) in accordance with Idaho Code § 42-202B(9). This way, if it becomes practicable, treated effluent from this right could be incorporated into a common land application program with effluent from Water Right No. 95-9055.

I thank you for your consideration and attention. If Kyle Capps or I can provide additional information, we would be pleased to do so. My direct dial is provided above. You may reach Kyle on his cell phone at 208-755-4744. We look forward to your guidance.

Sincerely,



Christopher H. Meyer

² Upon purchase of this separate development, The Ridge at Black Rock Bay was folded into The Club at Black Rock for development purposes. However, the homes and lawns served by this water right are served by a physically separate ground water system under Water Right No. 95-9248. Since no surface water right was available for this ground water right when it was permitted, the permit does not contain a condition similar that that included for No. 95-9055 prohibiting irrigation of lands to which surface rights are available.

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Encl: Water Permit Report for Water Right No. 95-9055
Original Permit for Water Right No. 95-9055
Water Permit Report for Water Right No. 95-9248
Original Permit for Water Right No. 95-9248

cc: Robert G. Haynes, Regional Manager, Northern Regional Office, IDWR
Kyle Capps, Vice President, Black Rock Development
John R. Layman, Layman, Layman & Robinson
Amie L. Anderson, Layman, Layman & Robinson
Scott N. King, Senior Project Engineer, SPF Water Engineering, LLC
Barry Rosenberg, Executive Director, Kootenai Environmental Alliance
Jai K. Nelson, Coordinator, Coalition for Positive Rural Growth

CHM:ch

S:\CLIENTS\8928\1\CHM Ltr to Gary Spackman re 95-9055 and 95-9248.DOC

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 95-09248

Priority: October 25, 2004

Maximum Diversion Rate: 0.25 CFS

This is to certify, that THE RIDGE AT BLACKROCK BAY HOMES INC
10636 N GOVERNMENT WAY
HAYDEN ID 83835

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>
MUNICIPAL	01/01 to 12/31	0.25 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER L1 (NE¼ NE¼) Sec. 9, Twp 48N, Rge 04W, B.M. KOOTENAI County

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2010**.
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. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.
6. Place of use is within the area served by the public water supply system of The Ridge at Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, and 3 of Section 9, Township 48N, Range 4W.
7. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 9th day of March, 2005.


KARL J DREHER, Director

[Close](#)IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report

09/02/2008

WATER RIGHT NO. 95-9248

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BLACK ROCK UTILITIES INC KYLE CAPPS, CGCS PO BOX 3070 COEUR D ALENE, ID 83816 (208) 665-2005
Original Owner	THE RIDGE AT BLACKROCK BAY HOMES INC 10636 N GOVERNMENT WAY HAYDEN, ID 83835 (208)772-5121

Priority Date: 10/25/2004

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MUNICIPAL	01/01	12/31	0.25 CFS	
Total Diversion			0.25 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NENE Lt 1	Sec. 09	Township 48N	Range 04W	KOOTENAI County
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Place(s) of use:

Place of Use Legal Description: MUNICIPAL KOOTENAI County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
48N	04W	9	1	NENE		2	NWNE							
			3	NENW										

Conditions of Approval:

1.	26A	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.
2.	046	Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
3.	134	Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.
4.	128	Place of use is within the area served by the public water supply system of The Ridge at Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, 3 and 4, Section 9, Township 48N, Range 4W.
5.	01M	After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

Dates:

Proof Due Date: 03/01/2010

Proof Made Date:

Approved Date: 03/09/2005

Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Application Received Date: 10/25/2004

Protest Deadline Date: 02/07/2005

Number of Protests: 0

Field Exam Date::

Date Sent to State Off:

Date Received at State Off:

Other Information:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 95-09055

Priority: 11/13/2000

Maximum Diversion Rate: 1.00 CFS

This is to certify, that **CAG INVESTMENTS LLC**
210 SHERMAN AVE STE 117
COEUR D'ALENE ID 83814

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>
MUNICIPAL	01/01 to 12/31	1.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NE 1/4 NW 1/4	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County
GROUND WATER	L2 SW 1/4 NW 1/4	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County
GROUND WATER	L2 SW 1/4 NW 1/4	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County
GROUND WATER	L2 SW 1/4 NW 1/4	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County
GROUND WATER	L3 SE 1/4 NW 1/4	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County
GROUND WATER	L3 SE 1/4 NW 1/4	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County
GROUND WATER	L3 SE 1/4 NW 1/4	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County

PLACE OF USE: MUNICIPAL

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
48N 04W 8			X	X					X	X		X	X	X	X	X	
48N 04W 9					X	X	X	X	X	X	X	X					
48N 04W 16			X		X	X	X	X									
48N 04W 17	X																

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before August 1, 2006.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. The issuance of this right does not grant any right-of-way or easement across the land of another.
5. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
6. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

MICROFILMED

OCT 13 2006

Scan from this point down.

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 95-09055

CONDITIONS OF APPROVAL

7. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 8th day of August, 2001.

Karl J. Dreher
for
KARL J DREHER, Director

MICROFILMED

OCT 12 2001

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report

09/02/2008

WATER RIGHT NO. 95-9055

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BLACK ROCK UTILITIES INC KYLE CAPPS, CGCS PO BOX 3070 COEUR D ALENE, ID 83816 (208) 665-2005
Original Owner	CAG INVESTMENTS LLC 210 SHERMAN AVE STE 117 COEUR D ALENE, ID 83814 (208)676-8696

Priority Date: 11/13/2000
Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MUNICIPAL	01/01	12/31	1 CFS	
Total Diversion			1 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NENW	Sec. 16	Township 48N	Range 04W	KOOTENAI County
GROUND WATER	SWNW Lt 2	Sec. 16	Township 48N	Range 04W	KOOTENAI County
GROUND WATER	SWNW Lt 2	Sec. 16	Township 48N	Range 04W	KOOTENAI County
GROUND WATER	SWNW Lt 2	Sec. 16	Township 48N	Range 04W	KOOTENAI County

GROUND WATER	SENW Lt 3	Sec. 16	Township 48N	Range 04W	KOOTENAI County
GROUND WATER	SENW Lt 3	Sec. 16	Township 48N	Range 04W	KOOTENAI County
GROUND WATER	SENW Lt 3	Sec. 16	Township 48N	Range 04W	KOOTENAI County

Place(s) of use:

Place of Use Legal Description: MUNICIPAL KOOTENAI County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
48N	04W	8		SWNE			SENE							
				NESW			NWSW			SESW				
				NESE			NWSE			SWSE			SESE	
		9		NENW			NWNW			SWNW			SENW	
				NESW			NWSW			SWSW			SESW	
		16		NWNE										
				NENW			NWNW			SWNW			SENW	
		17		NENE										

Conditions of Approval:

1.	26A	Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
2.	004	The issuance of this right does not grant any right-of-way or easement across the land of another.
3.	046	Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
4.	01M	After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
5.	102	The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
6.		Place of use is within the service area of CAG Investments, LLC.

Dates:

Proof Due Date: 08/01/2011

Proof Made Date:

Approved Date: 08/08/2001

Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Application Received Date: 11/13/2000

Protest Deadline Date: 02/05/2001
Number of Protests: 0
Field Exam Date::
Date Sent to State Off:
Date Received at State Off:

Other Information:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False