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DEPARTMENT OF
WATER RESOURCES

POCATELLO OFFICE
201 EAST CENTER STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201
TELEPHONE: (208) 232-6101
FACSIMILE: (208) 232-6109

IDAHO FALLS OFFICE
477 SHOUP AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

COEUR D'ALENE OFFICE
250 NORTHWEST
BOULEVARD, SUITE 106A
COEUR D'ALENE, ID 83814
TELEPHONE: (208) 765-6888

ALL OFFICES TOLL FREE
(877) 232-6101

LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

101 SOUTH CAPITOL BOULEVARD
SUITE 208
BOISE, IDAHO 83702

TELEPHONE (208) 395-0011
FACSIMILE (208) 433-0167

WWW.RACINELAW.NET

SENDER'S E-MAIL ADDRESS: CMM@RACINELAW.NET

W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC L. OLSEN
CONRAD J. AIKEN
RICHARD A. HEARN, M.D.
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JOSHUA D. JOHNSON
JOHANTHON S. BYINGTON
DAVE BAGLEY
CAROL TIPPI VOLYN
THOMAS J. BUDGE
CANDICE M. MCHUGH

April 29, 2008

David R. Tuthill, Jr.
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, ID 83720-0098

Re: Application for Permit No. 15-07285

Dear Director Tuthill:

This letter is written in response to Mr. Keen's letter of April 17, 2008, to Seth D. Seamons regarding Application for Permit No. 15-07285 ("Seamon's Permit"). As I understand the letter, the Department is requesting that the Seamons submit a technical report containing "data, analysis, and conclusions from a pump test or similar scientifically sound evaluation of the potential for [their] proposed water use to affect the flows of Warm Springs." (Letter at 2). I have included a copy of Mr. Keen's letter for your reference.

Concerns over the Seamon's Permit appear to have arisen because of the late filing of two protests: one by Samaria Water and Irrigation Company ("Samaria") and one by Mr. Dale Price.¹ It also appears that IDWR has some concern about the recent increase in the applications for groundwater diversions in the Malad River Basin. The primary focus of IDWR's concern is whether or not the diversion of water under Seamon's Permit will injure water rights owned by Samaria that divert from Warm Springs. (Letter at 1). I have attached a letter executed unanimously by the Board of Directors of Samaria explaining that their late filed protest to the

¹ From our conversations with IDWR staff and information in the file, the concern raised by Mr. Price is no longer the issue that is causing IDWR concern about Seamon's Permit.

Seamon's Permit was actually filed in error as they believed the point of diversion was closer to Warm Springs. Once Samaria became aware of the facts surrounding Seamon's Permit, they discussed the matter at their April 24, 2008, board meeting and determined that they had no concerns about Seamon's Permit.

In addition, it is important to recognize that Samaria does not have a measurement device in place to provide any flow, measurement or diversion data. Consequently, there is no data about the amount of water that has been historically or currently available at Warm Springs. There is also no data that there is a reduction in the amount of water diverted by Samaria nor is there any real practical way to measure the springs. I have attached a copy of Mr. Keen's April 17, 2008, letter to Samaria that requests them to install a measuring device. I understand that the Samaria Board also discussed this April 17, 2008, letter from Mr. Keen. However, I understand from my clients that the Samaria Board has decided it is not ready to install such a device nor were they able to commit to my clients that they will be willing and able to do so anytime in the near future. This fact, coupled with the fact that Samaria does not have a concern about the point of diversion and proposed water use, makes the condition of a pump test or other scientific test before the permit can be approved unreasonable.

As noted by Mr. Keen in his letter, the Department's rules specifically provide that the additional information submittal requirements "are [usually] waived for filings which seek to appropriate five (5) cfs or less" The Seamon's Application is for 3.6 cfs for 180 acres. The Seamon's point of diversion is over a mile from Warm Springs. Yet, IDWR has determined that a pump test or some other scientific test, is necessary in order to show that the senior user will not be injured.

Proving no-injury is a high burden that, in this case, effectively stops further development of the ground water resources in this area by individuals. I do not believe this is required standard in order to get an application approved. Idaho Code 42-203A states that the Director may reject or partially approve or grant with conditions an application for permit where there is evidence that the proposed use is such that it will reduce the quantity of water under existing water rights. As the Department notes in its letter, IDWR does not know "whether, or to what extent, your proposed water use will affect the flows of Warm Springs because local aquifer characteristics and the connection between the local aquifer(s) and Warm Springs remain relatively unknown." (Letter at 2). There is no good evidence to show that there is likely injury, will reduce the quantity of water available or that the ground water is actually hydraulically connected to the springs in question. In fact, Mr. Owsley specifically noted on page 12 of his November 27, 2007 memo that the "predicted impacts to the flows of Warm Springs (Samaria Irrigation Company) cannot be assessed due to the unknown nature of the source of the springs." Further, the requirement of a test, that is conditioned on the cooperation of a third party further complicates the matter.

Although the Seamons can appreciate the Department's concern given recent litigation in the Eastern Snake Plain Aquifer about wanting to protect senior spring water users, it seems premature to presume that the withdrawal of ground water under this permit will cause injury to

senior water users. Requiring the Seamon's to prove no injury is unreasonable, especially when the senior users are still provided with the recourse of requesting a water district be formed and making a delivery call, if there is some injury to their water rights caused by junior users.

I am requesting that the Department reconsider the condition, and that the Seamon's Permit be timely approved. If this is not agreeable, then I am requesting a meeting with you or Mr. Spackman and Mr. Keen in order to further evaluate other options that would allow the Seamon's Permit getting approved with conditions that are more reasonable.

Very truly yours,


CANDICE M. McHUGH

Enclosures

cc: Gary Spackman
Shelley Keen
Lorinda and Seth Seamons

CMM:mt