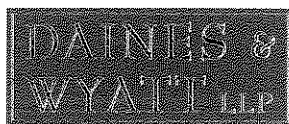


N. GEORGE DAINES, PC
SCOTT L. WYATT, PC †
JONATHAN E. JENKINS, PC
W. SCOTT BARRETT, *of counsel*

† Also licensed in Idaho



Attorneys at Law
108 North Main Street
Logan, Utah 84321
Telephone: (435) 753-4000
Facsimile: (435) 753-4002
E-Mail: law@dwalegal.com

February 14, 2007

SENT VIA FAX 208-287-6700
AND OVERNIGHT MAIL

David R. Tuthill
Interim Director
Idaho Department of Water Services
322 E. Front St.
Boise, Idaho 83720-0098

RECEIVED

FEB 20 2007

DEPARTMENT OF
WATER RESOURCES

RECEIVED

FEB 23 2007

Department of Water Resources
Eastern Region

RE: *Protest Against Approval of Application for Amendment to Application No. 's
11-7481 and 11-7491*

Dear Mr. Tuthill:

Please allow this letter to serve as Canyon Estate Property Owners Association's ("CEPOA") formal protest against the approval of Sam's Hollow Water Company's ("Sam's Hollow") application to change Application No.'s 11-7481 and 11-7491.

As you know, Sam's Hollow has applied the Idaho Department of Water Services for an amendment to Water Right No.'s 11-7481 and 11-7491 that would add a new point of diversion. As detailed herein, this application should be denied because the proposed change to these Water Rights sought by Sam's Hollow will be contrary to CEPOA's contractual rights in the same.

I. THE REQUESTED AMENDMENTS ARE CONTRARY TO THE RIGHTS GIVEN TO CEPOA IN THE PARTIES' AGREEMENT

A. The Parties' Agreements

CEPOA serves as the property association for the Canyon Estates development located in Fish Haven, Idaho. The Bear Lake Group, LLC ("BLG") is a development company that has developed a subdivision called "*The Point*". The BLG is also in the process of developing another subdivision called "*The Reserve*" that is in close proximity to Canyon Estates. Sam's Hollow is the owner of Water Right No.'s 11-7481 and 11-7491 and the delivery system providing domestic and commercial water for BLG and *The Reserve*.

Receipt
C083277

In 2006, the BLG sought annexation of *The Pointe* into Canyon Estates. In order to obtain final approval for *The Pointe* from the Bear Lake County authorities, BLG was required to provide a water source that would support the water needs of the subdivision. According to Planning and Zoning County Commission Records and the final plat, that water source was Water Right 11-07481.

CEPOA and BLG entered into a series of agreements to facilitate the annexation of *The Pointe* into the CEPOA. Specifically, CEPOA and BLG entered into a Development Agreement, Water Supply Agreement and Easement Agreement. On September 25, 2006, the 22 lots in *The Pointe* were annexed by into the CEPOA.

B. Under the Water Supply Agreement, CEPOA has an interest in a portion of Water Right No. 11-07481

Under the Parties' Water Supply Agreement, Sam's Hollow was obligated to "provide CEPOA with a secondary and supplementary supply of water if the Canyon Estates water system fails or is inadequate to meet the minimum requirements of Canyon Estates lot owners." (See Water Supply Agreement at ¶ 2). According to the restrictions placed on Water Right No. 11-07435, Canyon Estates' water system was not adequate to meet the demands of both the 33 original lots and the annexation of the 22 lots in *The Pointe*.

Paragraph 2 of the Water Supply Agreement provides that Doug Johnson, agent for Sam's Hollow, was required to transfer a portion of Water Right No. 11-07481 to CEPOA upon the execution and recording of the Development and Water Supply Agreements.¹ (See Water Supply Agreement). The transfer of this water right was necessary to support the annexation of the 22 lots in *The Pointe* into Canyon Estates. Contrary to its contractual obligations and despite the fact that the Development and Water Supply Agreements were executed nearly one year and four months ago, BLG has still not transferred a portion of Water Right No. 11-07481 to CEPOA.

CEPOA's interest in Water Right No. 11-07481 will be adversely effected if Sam's Hollow's application to amend is approved. BLG, through Sam's Hollow, is seeking to add a new point of diversion to Water Right No. 11-07481. This new point of diversion will decrease the amount of water available to support the water needs of *The Pointe*. BLG is currently in breach of the Water Supply Agreement and the requested Amendment to Water Right No. 11-07481 will cause further harm to CEPOA. BLG should not be permitted to impair CEPOA's interest in the water right through the requested Amendments.

¹ Paragraph 2 of the Water Supply Agreement also requires Mr. Johnson to transfer Water Right No. 11-07435 upon the execution and recording of the Development and Water Supply Agreements. (See Water Supply Agreement at ¶ 2). Mr. Johnson has likewise failed to transfer Water Right No. 11-07435 to CEPOA.

C. BLG Agreed to Supply Water to CEPOA through Application No. 11-07481

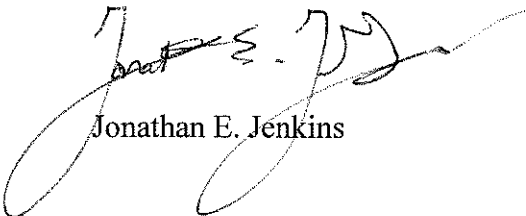
CEPOA owns its own water system. The sole source of water for the CEPOA water system is water right No. 11-07435. This right, issued by the Idaho Department of Water Resources on June 14, 1999, restricts the use of the water to the original 33 lots in Canyon Estates. Accordingly, it was necessary for BLG to supply water to *The Pointe* before it could be annexed into CEPOA.

BLG and CEPOA, recognizing the need for additional water to support *The Pointe*, agreed that BLG would furnish water as a condition of development and identified the precise source of that water. Specifically, the Water Supply Agreement provides, "the 22 lots annexed onto Canyon Estates as *The Pointe* will be supplied by Water Right No. 11-07481". (See Water Supply Agreement at ¶ 2) (emphasis added). BLG has supplied water hook-ups to *The Pointe*, however, BLG used Water Right No. 11-07435 to supply the water, rather than Water Right No. 11-07481 as required in the Water Supply Agreement. BLG, through its failure to supply water to CEPOA through Water Right No. 11-07481 has breached the parties' Water Supply Agreement and is seeking to do further harm to CEPOA through the requested Amendment to Application No. 11-07481.

Sam's Hollow's application to amend Water Right No.'s 11-07481 and 11-07491 should be denied. CEPOA's interest in these water rights will be severely impaired if Sam's Hollow's application to amend is approved. BLG is currently in breach of the Parties' Agreements and the new point of diversion requested by Sam's Hollow will decrease the water available to support the water needs of *The Pointe*. Accordingly, CEPOA respectfully requests that Sam's Hollow's applications be denied.

Sincerely yours,

DAINES & WYATT, LLP



Jonathan E. Jenkins

C: CEPOA, Jack McPhie
The Bear Lake Group, LLC
Sam's Hollow Water Co.
Chuck Ketterman

"EXHIBIT A"
WATER SUPPLY AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of September, 2005, by and between SAM'S HOLLOW WATER COMPANY, an Idaho nonprofit corporation (hereinafter "Sam's Hollow"), and THE CANYON ESTATES PROPERTY OWNERS ASSOCIATION AND ITS INDIVIDUAL LOT OWNERS (hereinafter referred to collectively as "CEPOA").

RECITALS:

A. Sam's Hollow is an Idaho nonprofit corporation duly incorporated on April 24, 2001, under Idaho law, and operated for the purpose of acquiring, developing, owning and operating water rights and a system of pipelines, tanks and equipment utilized to provide water for human consumption and irrigation purposes for the use and benefit of its Members, which include lot owners in Bear Lake Haven Subdivision.

B. ~~Sam's Hollow~~ is the owner and holder of Water Right Permit Nos. 11-7481 and 11-7491, issued by the Idaho Department of Water Resources for the purpose of supplying domestic water to Bear Lake Haven Subdivision. Sam's Hollow is also the owner of Fish Haven Water Users Company Certificate Nos. 822, 823 and 824 for a total of 140.5 shares which provides irrigation water and mitigation water relating to said water right permits.

*looking for
Hwy 12
in the
park*

C. The Bear Lake Group is a duly-organized and existing limited liability company and the owner, operator and developer of the subdivision commonly known as Bear Lake Haven near Fish Haven in Bear Lake County, Idaho. Presently, the Bear Lake Group is the sole owner and member of Sam's Hollow.

D. Natural Properties was the original owner and developer of real property commonly known as Canyon Estates near Fish Haven in Bear Lake County, Idaho, which lies adjacent to Bear Lake Haven. The original Canyon Estates and Canyon Estates First addition has been subdivided into lots by Natural Properties and sold, except for one lot owned by Natural Properties. The Bear Lake Group is the owner and developer of that portion of Canyon Estates commonly known as "The Pointe at Canyon Estates", which is in the process of being subdivided

and sold.

E. CEPOA currently owns its own water diversion delivery system which includes a well house, well, pump, motor, panel, storage tank and pipelines, together with the real property and easements relating to the location and operation of the same, referred to collectively as the "Canyon Estates Water System".

F. The source of water for the Canyon Estates Water System is Water Right Permit No. 11-7435 issued by the Idaho Department of Water Resources on June 14, 1999, and owned by Douglas A. Johnson.

G. The purpose of this Agreement is to provide for the inter-connection and joint use of the parties' water supply systems, to provide a backup and secondary supply of water to Canyon Estate lot owners and address other matters relating thereto.

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual covenants and promises of the parties contained herein, the parties covenant and agree as follows:

1. **Water Supply.** Sam's Hollow remains solely responsible to provide Bear Lake Haven lot owners a supply of water for human consumption, to the extent necessary to meet the minimum domestic water requirements as determined by DEQ. CEPOA remains solely responsible to provide Canyon Estates lot owners a supply of water for human consumption, to the extent necessary to meet the minimum domestic water requirements as determined by DEQ, all in accordance with their respective By Laws and Rules and Regulations as they now exist and may be established from time to time.

In the event of an emergency or in the event that the Canyon Estates Water System fails or is inadequate to meet the minimum requirements of Canyon Estates lot owner Sam's Hollow will provide CEPOA with a secondary and supplemental supply of domestic water from the Sam's Hollow water system for the use and benefit of Canyon Estates lot owners in sufficient quantity and quality to meet the minimum domestic water requirements determined by DEQ, including outside irrigation of up to a maximum of 1/10 acre per lot (4,356 sq. ft.).

If Sam's becomes the primary provider of water to Canyon Estates under this Agreement as a result of the failure of the Canyon Estates Water System, then CEPOA agrees to pay Sam's

Hollow any increase in operational and maintenance incurred by Sam's Hollow as a result of being the primary water supplier to Canyon Estates lot owners. These supply obligations will not limit or impair Sam's Hollow's rights and obligations to develop, operate and manage its water supply and delivery systems as required to meet the minimum domestic water requirements of lot owners in Bear Lake Haven.

1.1 The parties' water systems will be inter-connected at the expense of Sam's Hollow based upon an engineering design approval by DEQ.

1.2 Once inter-connected the parties may utilize water, holding tanks and water system facilities of the other on a cooperative basis to the extent needed to meet minimum requirements for emergency purposes, to provide minimum domestic water requirements and permit the efficient operation of their respective systems on an integrated basis, even though each system will remain separately owned, operated and maintained.

1.3 The parties grant to each other permanent easements and rights-of-way on, over, under and through their respective platted subdivision roadways for the purpose of constructing, operating, maintaining and replacing as necessary water system pipelines, other utilities and related facilities.

1.4 If and when the Idaho Department of Water Resources requires the parties to amend their water rights to reflect their common places of use, both parties will proceed as necessary to secure approval of such amendments and cooperate with each other as needed in so doing.

1.5 If Bear Lake Group develops and transfers to CEPOA a new, second well located within Canyon Estates which is sufficient to supply Canyon Estates with a secondary and supplemental supply of domestic water, CEPOA will accept this new well as their secondary and supplemental source of domestic water and the Bear Lake Group will be released from its' obligation under this paragraph 1 to provide Canyon Estates with a secondary source from Bear Lake Group wells. Bear Lake Group would pay for all costs of this well and associated costs of connecting it to the Canyon Estates Water System.

2. **Transfer of Water Rights.** Water right No. 11-07435, owned by Douglas Johnson, provides a supply of water to the original 33 lots of Canyon Estates, and supplies one

residential hook up to the 20-acre parcel located to the Southwest of Canyon Estates. The 22 lots annexed onto Canyon Estates as the Pointe at Canyon Estates will be supplied by Water Right No. 11-07481 owned by Sam's Hollow. Once this Agreement and the Development Agreement have been signed and the Amended Covenants recorded, the required portions of the Water Right Nos. 11-07435 and 11-07481 that supply domestic water to 55 Canyon Estates lot owners will be transferred to CEPOA. Douglas Johnson will also transfer a portion of Water Right No. 11-07435 to the one residential hookup that is now in place for the 20-acre parcel to that property owner who will pay regular assessments to CEPOA, which will remain the supplier of that parcel. All parties agree to execute such additional documents as may be required to complete and document the aforesaid transfer.

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3. **Ownership.** Sam's Hollow and CEPOA will continue to be the sole owner and operator of their respective water rights, wells, pumps, motors, storage tanks, pipelines and all easements and rights of way pertaining to the location and operation of the same. Inter-connection facilities and equipment will be owned by and be part of the water system of the party that pays the cost of installation.

4. **Water System Installation Expenses.** Sam's Hollow shall be solely responsible for the cost of installing all pipelines and water system facilities to inter-connect the Sam's Hollow and CEPOA water system together. Sam's Hollow will also be responsible for the cost of installing the water system to be constructed in the Pointe at Canyon Estates.

5. **Operation and Maintenance Expenses.** Each party shall be solely responsible to operate, maintain and repair their respective water supply systems for the purpose of delivering water to their respective lot owners.

6. **Rates.** All water supplied by Sam's Hollow and CEPOA to their respective lot owners will be metered and billed at a per-gallon rate established by each entity for the purpose of operating and maintaining their respective systems.

7. **Cooperation.** The parties will cooperate and communicate with each other as may be reasonable and necessary with regard to the use and operation of the inter-connected water system and the delivery and use of water pursuant to this Agreement.

8. **Default.** In the event any party fails to perform any of the terms, conditions or

provisions of this Agreement, and fails to cure such default within thirty (30) days of receipt of written notice of default, the non-defaulting party may elect to obtain specific performance of this Agreement, which is the sole and exclusive remedy available.

9. **Recording.** This Agreement will be recorded in the Bear Lake County Recorder's Office to give notice hereof.

10. **Binding Effect.** All of the terms, conditions and covenants of this Agreement shall be binding upon the parties and shall inure to the benefits of all successors and assigns of the parties hereto.

11. **Modification or Revocation.** This Agreement may be modified or revoked in writing upon the mutual consent of all of the parties hereto, or their successors in interest.

12. **Dispute Resolution.** Any substantial dispute between the parties shall be resolved in accordance with the following provisions:

(a) **Mediation.** The parties shall designate a mediator and appear before the mediator and attempt to mediate a settlement of the dispute.

(b) **Arbitration.** In the event the dispute between the parties cannot be settled as a result of mediation as above described, the dispute shall be arbitrated in accordance with the Uniform Arbitration Act, Title 7, Chapter 9, Idaho Code. The parties shall elect a mutually agreeable arbitrator and the dispute shall be submitted to that arbitrator for decision. The arbitrator shall be authorized to enter a decision to resolve the dispute that is binding on the parties.

(c) **Litigation.** Litigation is allowed between the parties only for the purpose of enforcing a settlement agreement entered into between the parties as a result of mediation, or an arbitrator's decision resulting from arbitration.

(d) **Injunctive Relief.** Either party may request a Court to issue such temporary or interim relief (including temporary restraining orders and preliminary injunctions) as may be appropriate, either before or after mediation or arbitration is commenced. The temporary or interim relief shall remain in effect pending the outcome of the mediation or arbitration. No such request shall be a waiver of the right to submit any dispute to mediation or arbitration.

(e) **Arbitration and Mediation Costs.** The parties shall share equally in all expenses and costs and fees of the mediator and arbitrator. Each party shall be responsible for its own costs, attorney fees and witness fees, if any. However, the arbitrator may award reasonable attorney fees to the prevailing party.

(f) Choice of Law and Venue. This Agreement and the validity, interpretation and performance thereof shall be governed by and construed in accordance with the laws of the State of Idaho. The place of venue for all dispute resolution pursuant to this paragraph shall be Bear Lake County, Idaho, unless the parties mutually agree to another location.

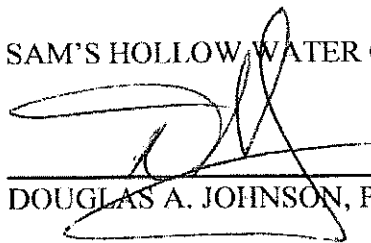
13. Notices. All notices required to be given pursuant to this Agreement shall be served upon the parties by certified mail, return receipt requested, at the following addresses:

Sam's Hollow Water Company
%Douglas A. Johnson, President
24 Country Club Circle
Tequesta, FL 33496

Canyon Estates Property Owners Association
% Jack McPhie, President
P.O. Box 177
Fish Haven, ID 83287

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date recited above.

SAM'S HOLLOW WATER COMPANY

A handwritten signature in black ink, appearing to be 'D. Johnson', is written over a horizontal line.

DOUGLAS A. JOHNSON, President

CANYON ESTATES PROPERTY OWNERS
ASSOCIATION

By _____
JACK MCPHIE, President

STATE OF FLORIDA

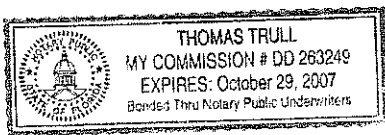
)

: ss

County of Palm Beach)

On this 2nd day of September, 2005, before me, the undersigned Notary Public, in and for said State and County, personally appeared Douglas A. Johnson, known or identified to me to be the President of Sam's Hollow Water Company, L.L.C., whose name is subscribed to the within instrument and acknowledged to me that he is authorized and instructed to execute and has executed the same on behalf of said Company, and further acknowledged to me that said Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this Certificate first above written.



SEAL

[Signature]
NOTARY PUBLIC FOR:

Residing at: 177 US Hwy 9, Tequesta, FL 33469
My Commission Expires:

ex. 10.29.07

STATE OF IDAHO

)

: ss

County of)

On this _____ day of _____, 2005, before me, the undersigned Notary Public, in and for said State and County, personally appeared Jack McPhie, known or identified to me to be the President of the Canyon Estates Property Owners Association, whose name is subscribed to the within instrument and acknowledged to me that he is authorized and instructed to execute and has executed the same on behalf of said Association, and further acknowledged to me that said Association executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this Certificate first above written.

NOTARY PUBLIC FOR:

Residing at:

My Commission Expires:

SEAL