

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Fee SC
Receipt ED37235
Received by SC
Date 9-18-06

APPLICATION FOR AMENDMENT OF A PERMIT

Name of Applicant Sam's Hollow Water Company Phone 208-232-6101 (R. Budge)

Mailing address c/o Randall C. Budge, POB 1391, Pocatello, ID 83204 or 561-762-2710

I am the owner and the holder of Permit to Appropriate the Public Waters of the State of Idaho No. 11-07491, and request that (D. Johnson)

the permit and permit map be amended and/or changed as follows:

Purpose of Amendment: X Change point of diversion X Add point of diversion
X Change place of use _____ Change nature of use _____ Change period of use _____ Other _____

1. Point of diversion: _____ $\frac{1}{4}$ _____ $\frac{1}{4}$ _____ $\frac{1}{4}$, Section _____, Township _____, Range _____, B.M.,
County of Bear Lake. Other points of diversion (See Attached)

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year) (water use) (Begin Month) (End month)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year) (water use) (Begin Month) (End month)

Amount 1.22 cfs for Domestic purposes from 1/01 to 12/31 (both dates inclusive)
(cfs or acre-feet per year) (water use) (Begin Month) (End month)

3. Place of use or land to be irrigated:

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16S	43E	2									D	D	D	D	D	D	D	D	
16S	43E	10	D	D	D	D	D	D	D	D	D	D					D	D	
16S	43E	11		D	D		D	D		D			D	D			L		
16S	43E	14		D															
16S	43E	15	D	D	D	D													

Total number of acres to be irrigated _____

4. a. Who owns the property at the point of diversion? Bear Lake Group, LLC

b. Who owns the land to be irrigated or place of use? Bear Lake Group, LLC

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing:

1. See attached Development and Operating Agreement dated 9/1/01 and Assignment and Assumption Agreement dated 9-15-04. Applicant owns subject water rights and delivery system providing domestic and commercial water for Bear Lake Group, LLC's property and development known as "The Reserve" at Bear Lake, f/n/a/ Bear Lake Haven.

2. BLM owns SE1/4 NW1/4, NE1/4 SW1/4, Sec. 10, T. 16S, R. 43E. Applicant is in the process of acquiring this property via exchange.

Complete the following map by showing land and point of diversion as proposed by this amendment.
Show $\frac{1}{4}$ section, township, range and ditches. (The smallest subdivision represents 40 acres.)

SEE ATTACHED MAP

Scale: 2 inches equal 1 mile

I hereby request approval of this change subject to the fact that no one will be injured by the change, and that the change will be made at my own risk.

Signed this 7th day of September, 2006.

Randall C. Budge, Attorney For Applicant
Permit Holder Signature (and title, if for a company or organization)

ACTION OF THE DEPARTMENT OF WATER RESOURCES

Preliminary check by Sc Publication prepared by Sc Date 10/10/06

Published in News Examiner Publication dates 10/18 & 10/25/06

I, _____, of the Department of Water Resources hereby

Witness my hand this _____ day of _____, 20_____.

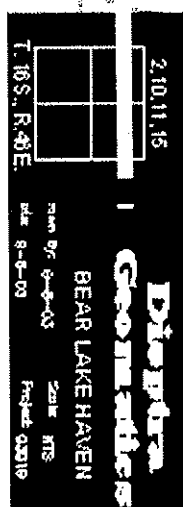
SIGNATURE

POINTS OF DIVERSION:

The location of the points of diversion as combined for Permit Nos. 11-7481 and 11-07491 are as follows:

Township 16 South, Range 43 East, B.M., Bear Lake County, Idaho:

Section 2:	NW SW
Section 10:	NW NW, NW NE
Section 11:	NW NW, S1/2 SW
Section 15:	NW NE



ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT is made this 15th day of September, 2004, by and between C. HOWARD JOHNSON, dba Bear Lake Haven, whose address is 4380 S. Syracuse Street, Suite 510, Denver, Colorado 80327 ("Assignor") and BEAR LAKE GROUP, L.L.C., in care of DOUGLAS A. JOHNSON, Manager, 24 Country Club Circle, Tequesta, Florida 33469 ("Assignee").

RECITALS

A. WHEREAS, Assignor and Douglas A. Johnson and/or his designated entity, now Assignee, entered into a Real Estate Purchase and Sale Agreement dated June 9, 2004 ("Agreement"), pursuant to which Assignor agreed to sell and Assignee agreed to purchase certain real property located in Bear Lake County, Idaho, commonly known as the Bear Lake Haven Project, Parcels 1, 2A, 2B, 2C and 2D;

B. WHEREAS, said Agreement is scheduled to be closed on or about September 15, 2004, at First Idaho Title Company, Montpelier, Idaho; and

C. WHEREAS, as a part of said Agreement and closing, Assignor has agreed to assign to Assignee all membership interests and any and all other rights, title or interest in and to Sam's Hollow Water Company, an Idaho nonprofit corporation, which was organized to acquire, develop, own and operate certain water rights and delivery systems to provide culinary water for domestic and irrigation purposes to Bear Lake Haven Development.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Assignment.** Assignor hereby assigns to Assignee all of Assignor's right, title and interests, including all membership interests in and to Sam's Hollow Water Company, an Idaho nonprofit corporation.

2. **Assumption.** Assignee hereby assumes, holds harmless and indemnifies all of Assignor's liabilities and contractual obligations and agrees to faithfully perform all of Assignor's duties and contractual obligations on or after the date of closing on the Agreement between Assignor and Assignee, including but not limited to obligations under that certain Development and Operating Agreement entered into on September 1, 2001 between Sam's Hollow Water Company and C.

Howard Johnson and that certain Agreement entered into on March 14, 2002, between Fish Haven Water Users Company, Sam's Hollow Water Company, and C. Howard Johnson.

3. **Non-Assumption of Other Liabilities.** Except as specifically set forth herein, Assignee does not and will not be obligated to assume any other obligations, liability or duty of Assignor of any form or nature.

4. **Scope of Agreement.** This Assignment and Assumption is intended to apply only to Sam's Hollow Water Company.

5. **Water Rights.** Sam's Hollow Water Company is the owner of 141.5 shares of water stock in Fish Haven Water Users Company evidenced by Certificate Nos. 822, 823 and 824, pursuant to which Sam's Hollow Water Company is entitled to use irrigation water from Fish Haven Creek upon Bear Lake Have property. Sam's Hollow Water Company is also the owner of Permit Nos. 11-7841 and 11-7491 issued on September 7, 2004, in connection with the Amended Preliminary Order of May 24, 2004, issued by the Idaho Department of Water Resources. Said Permits provide ground water for domestic and commercial purposes to Bear Lake Haven. Said water rights are sold "AS IS", and without any warranty express or implied, excepting only warranties of title. Assignee has investigated and obtained independent counsel for advice on said water rights and without relying upon statements or representations of Assignor not herein expressed.

6. **Counterparts.** This Assignment and Assumption Agreement may be executed in counterparts, each of which shall be an original, but which shall together constitute but one agreement.

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Agreement on the date first written above.

ASSIGNOR:

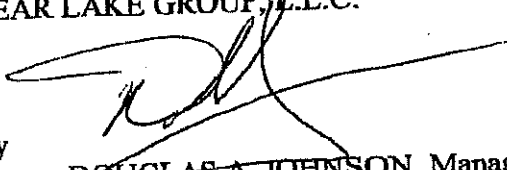
By


C. HOWARD JOHNSON, dba
Bear Lake Haven

ASSIGNEE:

BEAR LAKE GROUP, L.L.C.

By


DOUGLAS A. JOHNSON, Manager

DEVELOPMENT AND OPERATING AGREEMENT

THIS AGREEMENT, made and entered into effective this 1st day of September, 2001, by and between SAM'S HOLLOW WATER COMPANY, an Idaho non profit organization, (hereinafter "Sam's Hollow") and C. HOWARD JOHNSON, an individual whose address is 4380 S. Syracuse St, Suite 510, Denver, CO 80237, d/b/a Bear Lake Haven (hereinafter "Developer").

RECITALS

WHEREAS, Developer owns certain tracts of land near Fish Haven in Bear Lake County, Idaho, and plans to separately construct and develop a Residential Community according to subdivision plats to be approved and recorded in the public records of Bear Lake County, Idaho.

WHEREAS, Developer finds it neither feasible nor advisable to own or operate Water Distribution Facilities necessary to provide such services to the future purchasers of lots within the Developer's Residential Community; and therefore, desire to develop a system which would provide these services.

WHEREAS, Developer agrees to construct the complete Water Distribution Facilities and to convey such facilities to Sam's Hollow (a non profit corporation organized solely for the purpose of managing, operating, and maintaining Water Distribution Facilities for its Members) in return for Sam's Hollow's promise to provide water services to the lot owners located within Developer's Residential Community.

WHEREAS, Developer may, at its option additionally construct Sewage Collection Facilities to service its own particular Residential Community and may convey such facilities to Sam's Hollow for it to manage, operate, and maintain; provided however, Sewage Collection Facilities are not required to be constructed by either the Developer or by Sam's Hollow.

NOW THEREFORE, the parties deem it necessary to enter into this agreement with the terms and conditions set forth below and mutually agree as follows:

ARTICLE I DEFINITIONS

1.1 Water Distribution Facilities shall mean all conduits for distributing water including but not limited to wells, well houses, water storage facilities, water mains, water lines, valves, hydrants, and pumping and treatment facilities capable of providing potable water of chemical content which shall conform to the standards of all governmental authorities having jurisdiction, in quantity at least sufficient to meet the reasonable requirements of all houses constructed within the area as they shall become occupied, and also to meet the reasonable requirements of fire-fighting facilities associated with the Developer's Residential Community. The term "Water Distribution Facilities" does not include installing or maintaining conduits leading from the main water line onto the separate lots within the Developer's Residential Community.

1.2 Sewage Collection Facilities shall mean all conduits in collecting sewage discharging from the sanitary conveniences such as toilets, sinks, showers, laundries, kitchens, including, but not limited to, the laterals, the collector lines, treatment and disposal facilities, the trunk sewers up to the site of the sewage treatment and disposal facilities, the force mains, and the pumping stations.

1.3 Members shall mean the owner of any of Developer's lots, who are entitled to receive water and/or sewer services from Sam's Hollow, in accordance with its bylaws and the Developer's restrictive covenants.

1.4 Residential Community shall mean the Developer's real property and the subdivision plans and plats recorded among the public records of Bear Lake County, Idaho. The real property of Developer is described in Exhibit A attached hereto and incorporated by reference.

ARTICLE II PURPOSE / SCOPE OF SERVICES

2.1 During the term of this Agreement, Developer agrees to engage Sam's Hollow to manage, operate, and maintain the Water Distribution Facilities together with any Sewage Collection Facilities that may be constructed and conveyed to Sam's Hollow. All parties hereto agree that they will cooperate in good faith with the other, its agents, and subcontractors to facilitate the performance of the mutual obligations set forth in this Agreement.

ARTICLE III TERMS/ TERMINATION

3.1 Term. This Agreement shall commence upon execution by all parties.

3.2 Termination. This Agreement shall terminate once the Developer has constructed all Water Distribution Facilities and transferred them to Sam's Hollow in order to service all lots within the Developer's Residential Community and upon a majority vote of Sam's Hollow's members.

ARTICLE IV
CONSTRUCTION OF FACILITIES

4.1 Construction of Water Distribution Facilities. Developer shall construct Water Distribution Facilities necessary to provide water distribution services to the Developer's Residential Community.

4.2 Construction of Sewage Collection Facilities. Developer may additionally construct Sewage Collection Facilities on the property. However, nothing in this Agreement shall obligate Developer to construct Sewage Collection Facilities. Furthermore, Sam's Hollow shall have the right but be under no obligation to accept the transfer of Sewer Collection Facilities nor assume the operation, management or maintenance of such facilities.

4.3 Quality of Work. The Developer covenants, represents, and warrants that the Water Distribution Facilities and Sewage Collection Facilities will be constructed in good workman-like manner in accordance with generally accepted engineering practice, and that when completed they will be adequate for the furnishing, respectively, of water and sewer service at least for the houses constructed for the Developer's residential property subject to this agreement and connected to such Facilities.

ARTICLE V
CONVEYANCE/ OWNERSHIP

5.1 Conveyance of Facilities. Developer agrees to convey and Sam's Hollow agrees to accept all properly constructed and completed Water Distribution Facilities and, if Developer elects to install, Sewage Collection Facilities constructed by Developer, together with all necessary easements, rights, equipment, and installations appurtenant thereto. Once conveyed to and accepted by Sam's Hollow, such facilities will be owned, managed, operated and maintained by Sam's Hollow, as provided for in Article VIII below.

5.2 Conveyance of Water Shares. Developer agrees to transfer and convey to Sam' Hollow all of their water shares in Fish Haven Water Users Company, consisting of 140.5 shares. Once conveyed to and accepted by Sam's Hollow, such water shares will be owned, managed, operated and maintained by Sam's Hollow, as provided for the following subparagraphs and also in Article VIII below.

- (a) Until such time as Sam's Hollow requires the use of the water shares for the Residential Community being developed, Developer shall have the right to continue to use the water represented by such shares for irrigation purposes on their respective properties in accordance with historic practices, in consideration for payment of the water assessments thereon.

- (b) The water available from the water shares transferred to Sam's Hollow by Developer shall be reserved and dedicated for use exclusively on the real properties of Developer.
- (c) In the event Sam's Hollow dissolves or ceases to exist such water shares shall be transferred and conveyed back to Developer.

5.3 Time of Conveyance. All conveyances shall be timely made to Sam's Hollow upon request and no later than the last month of the year in which the facilities are completed.

5.4 Good Title. The undersigned Developer shall furnish on each conveyance date appropriate instruments of conveyance sufficient to vest in Sam's Hollow, subject to no prior liens or encumbrances, good and marketable title to all of the physical components of the portions of the Water Distribution Facilities and/or Sewage Collection Facilities then being conveyed, together with all such rights-of-way and easements as shall be necessary and appropriate for the operation, maintenance, and improvement of the portions of the facilities conveyed.

5.5 Membership in Sam's Hollow. Developer shall receive one Membership for each lot located within the Developer's Residential Community which has access to water services from Sam's Hollow. Developer shall be responsible to pay the maintenance fee as specified in section 6.2 for all unsold lots. Once the Developer sells a lot, the Developer's Membership interest is transferred to the Purchaser making the purchaser obligated to then pay the maintenance fee to Sam's Hollow.

ARTICLE VI REIMBURSEMENT & MAINTENANCE FEES

6.1 Reimbursement in Constructing Facilities: The cost of constructing the Water Distribution Facilities and/or Sewage Collection Facilities within the Developer's Residential Community shall be recouped by Developer in the selling price of the lots. Sam's Hollow is not responsible to reimburse for these costs and will only be responsible for the operation and maintenance of such facilities upon conveyance and acceptance.

6.2 Collection of Maintenance Fees for Services. From and after the effective date of this Agreement, Developer shall pay to Sam's Hollow such assessments and fees for water distribution and/or sewer services, for all unsold lots within the Developer's Residential Community as determined by Sam's Hollow. As each of the Developer's lots are sold, the purchaser will then be obligated to pay such fees.

6.3 Restrictive Covenants. A restrictive covenant or general deed restriction will be recorded in the public records of Bear Lake County against Developer's properties providing that any such unpaid assessments and fees shall constitute a lien against each lot which may be collected,

together with attorney fees and costs by foreclosure. Additionally, the restrictive covenants shall limit the amount of irrigation per lot to 5,000 square feet.

6.4 Investment of Fees. During the term of this Agreement, Sam's Hollow shall invest and reinvest all funds paid to it under the terms and conditions of this Agreement in such a manner as is reasonable and prudent, and shall maintain full and complete records of accounts of all the funds and furnish to Developer an annual accounting of the funds.

ARTICLE VII
PERMITS AND COMPLIANCE WITH
GOVERNMENT REGULATIONS

7.1 Sam's Hollow shall obtain all necessary right-of-ways, permits, licenses, easements and approvals which it may be required to obtain by the governments of the United States, the state of Idaho, County or City or department thereof, for operation and use of the Water Distribution Facilities and/or Sewage Collection Facilities.

ARTICLE VIII
OPERATING/MAINTENANCE/ REPAIRS

8.1 Operating Facilities. Sam's Hollow shall at its sole cost and expense operate and maintain the water shares and Water Distribution Facilities and/or Sewage Collection Facilities acquired from Developer in accordance with all applicable laws, ordinances, regulations, judicial decrees and orders. Sam's Hollow shall perform routine maintenance, consisting of preventive and corrective maintenance for the Water Distribution Facilities and/or the Sewage Collection Facilities provided to Sam's Hollow by Developer through this Agreement. Sam's Hollow shall maintain these facilities at all times in an operable manner.

8.2 Obligation to Members. Sam's Hollow shall furnish to each owner of property within the Residential Community of Developer who pays the maintenance fees the following (a) water; (b) sewage services if obtained; (c) the reasonable maintenance cost of the same during the term of this Agreement, or until central water and/or sewage facilities are available; (d) when central water and/or sewage facilities become available, the cost of connecting each such owner with the Water Distribution Facilities and/or Sewage Collection Facilities including the cost of all necessary materials, but not required meter or other deposits or connection charges.

ARTICLE IX
ANNUAL MEETING

9.1 Upon the request of any of the parties, a meeting will be held withing the first ninety(90) days of each calendar year for the purpose of adjusting maintenance fee charges or other disputes in order to ensure Sam's Hollow is able to maintain and operate the Water Distribution and/or Sewage Collection Facilities adequately.

ARTICLE X
DEFAULT

10.1 In the event any party breaches a material term or condition of this Agreement, and such breach is not cured within thirty (30) days of written notice thereof, the non-breaching party may elect any one of the following remedies which are the sole and exclusive remedies available:

(a) to terminate this Agreement and obtain reconveyance of any and all facilities transferred to Sam's Hollow by Developer; and

(b) to obtain specific performance of this Agreement.

ARTICLE XI
MISCELLANEOUS

11.1 Merger. This Agreement contains the entire and sole understanding of the parties hereto with respect to the matters covered hereby, and all of the transactions contemplated herein, and supersedes and cancels any and all oral or written prior agreements, understandings, statements, and representations between the parties with respect thereto or any part hereof.

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

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

11.2.2 Arbitration. In the event the dispute between the parties cannot be settled as a result of mediation as described in paragraph 11.2.1 above, the dispute shall be arbitrated in accordance with the Uniform Arbitration Act, Title 7, Chapter 9, Idaho code. The parties shall select 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. The arbitrator's decision shall be non-appealable.

11.2.3 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.

11.3 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 mediation or arbitration. No such request shall be a waiver of the right to submit any dispute to mediation or arbitration.

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

11.5 Choice of Law. 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.

11.6 Assignment. Developer may assign this Agreement upon notice to Sam's Hollow.

11.7 Binding Effect. This agreement, subject to the provisions of 11.6, shall extend to and bind the successors and assigns of the respective parties.

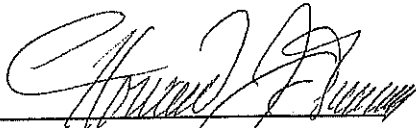
11.8 Time of the Essence. Time is of the essence of this Agreement.

11.9 Severability. The paragraphs, sentences, clauses and phrases of this Agreement are severable and if any phrase, clause, sentence, or paragraph of this Agreement shall be declared invalid or unconstitutional by judgement or decree of any court with appropriate jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences and paragraphs of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates recited below.


C. HOWARD JOHNSON
dba Bear Lake Haven

3/23/02
DATE


SAM'S HOLLOW WATER COMPANY
By: C. Howard Johnson, President

3/23/02
DATE