

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 11-07491

Priority: January 11, 2002

Maximum Diversion Rate: 1.22 CFS

This is to certify, that SAMS HOLLOW WATER CO
201 E CENTER ST
POCATELLO ID 83201

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>
DOMESTIC	01/01 to 12/31	1.22 CFS

LOCATION OF POINTS OF DIVERSION:

GROUND WATER	SW¼NE¼	Sec. 10, Twp 16S, Rge 43E, B.M., BEAR LAKE County
GROUND WATER	NW¼SW¼	Sec. 2, Twp 16S, Rge 43E, B.M., BEAR LAKE County
GROUND WATER	NW¼NW¼	Sec. 11, Twp 16S, Rge 43E, B.M., BEAR LAKE County

PLACE OF USE: DOMESTIC

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									X	X	X	X		X			
16S 43E 10	X	X	X	X													
16S 43E 11		X	X		X	X											

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2009**.
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. Prior to diversion of water under this right and prior to construction of any additional wells a water management and operation plan for Sams Hollow and any successor must be submitted in writing and approved in writing by IDWR. The water management and operation plan shall contain the following components: (a) a description of a method for forecasting flows in Fish Haven Creek using measured Fish Haven Creek data or data from a comparable basin; (b) a fixed date each year, no later than April 1, when the volume of water to be diverted under this right during the upcoming year is declared and the forecasted streamflows will be compared to projected water use within the subdivision and; (c) a description of curtailment or other water conservation measures that will be employed in times of mitigation water shortages, and how water users will be notified prior to May 1 about restricted water use in the year of predicted shortage; (d) a description of how the curtailment and conservation measures will be monitored and enforced; (e) a description of the

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entire flow path of mitigation water, including ditches, pipes, culverts, control structures, and how the system will operate, beginning at the diversion from the Upper North Ditch, the #1 North Ditch, and the #3 North Ditch, and ending at the discharge to Bear Lake; (f) a specific description and the location of each measuring device and how each measuring device will be installed and maintained; (g) a description of the frequency of measuring, comparing, and reporting; (h) a list of those to whom the reports will be submitted; (i) the identity of the specific officer, by title, in the association or corporate organization, that will be responsible for the oversight of system operation; and (j) an alternate plan for mitigation water or curtailment should statutory claim no. 11-4022 ever be curtailed by the watermaster of the Bear River. In addition, the water management and operation plan shall also contain an operations manual for the benefit of employees working for Sams Hollow that describes duties relative to operation, monitoring, and reporting.

5. The water management and operation plan must incorporate the components of the Settlement Agreement with PacifiCorp, dated October 7, 2003, related to water delivery, measurement, reporting, and retirement of irrigated acreage as the Bear Lake Haven Subdivision develops.
6. The provisions of the water management and operation plan will be incorporated as conditions of the permit to appropriate water. Failure of the permit holder to adhere to the provisions of the water management and operation plan, including having an active and available officer of the association assigned to oversee the water management and operations plan, is cause for IDWR to issue a notice of violation and/or cease and desist order to the permit holder, and to cancel the permit to appropriate water. The provisions of the water management and operation plan may be amended without amending the water right permit under Idaho Code § 42-211, but all changes must be approved in writing by IDWR.
7. The use of water diverted by Fish Haven Water Users Company under water right no. 11-4022 for mitigation purposes must be represented by (a) an approved transfer recognizing the change in nature of use from irrigation to mitigation, or (b) an approved lease of a portion of water right no. 11-4022 to the Idaho Water Supply Bank for mitigation purposes. Diversion and use for mitigation without written approval by IDWR will be an illegal diversion of water.
8. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 11.
9. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
10. The irrigation occurring under this domestic use shall not exceed $\frac{1}{2}$ acre within each platted subdivision lot upon which a home has been constructed. Alternatively, an owner of property may divert and use no more than 0.04 cfs and 2,500 gallons per day for all uses he may make on all property he may own in the subdivision. This right does not provide for irrigation of common areas.
11. Domestic use is for 63 homes, 256 condominium units, and 4 commercial units under water right no. 11-7481, and 241 homes under water right no. 11-7491.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 7th day of September, 2004.


KARL J DREHER, Director

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATIONS)	
TO APPROPRIATE WATER NOS.)	AMENDED
11-7481 AND 11-7491 IN THE NAME)	PRELIMINARY ORDER
OF SAM'S HOLLOW WATER)	
COMPANY)	
_____)	

On October 8, 2003, a hearing was conducted by the Idaho Department of Water Resources (IDWR) for the contested case created by protests filed against the above applications to appropriate water. After considering the testimony, the exhibits, and additional information in the files of IDWR, the hearing officer ordered that the record be augmented with additional information about availability of water in Fish Haven Creek delivered by the Fish Haven Water Users Company, and also the means of measurement and administration of future water diversions and deliveries for mitigation. Sam's Hollow Water Company (Sam's Hollow) submitted additional information.

On April 23, 2004, IDWR issued a Preliminary Order regarding application to appropriate water nos. 11-7481 and 11-7491. Sam's Hollow filed a timely petition for reconsideration of the preliminary order on May 6, 2004.

The petition challenges findings of fact, conclusions of law, and portions of the order. Each challenge will be restated and addressed in the following section. The restatement of the challenge refers to the decision paragraph in question. The response follows the restatement.

PETITION FOR RECONSIDERATION

Finding no. 25 issue: Finding of Fact 25 incorrectly states that the applicant's mitigation plan proposes "a measurement of surface water diverted and delivered to the subdivision."

Response: As per the applicant's representation, measurement of surface water supply is not proposed as part of the mitigation plan, and the reference will be stricken.

Finding no. 26 issue: Finding of Fact 26 should contain additional flow data measured by Dr. Robert W. Hill (Hill). IDWR should conclude that these measurements establish "it is highly unlikely available summer flows in Fish Haven Creek would be much if ever less than 5.0 cfs, far in excess of water is needed to meet full mitigation requirements."

Response: Flow data submitted by Hill and Dr. Charles E. Brockway (Brockway) were submitted to IDWR in response to the order requiring augmentation of the record. The petition for reconsideration mentions the flow data submittal in reference to finding no. 26 and findings 48 and 49.

The flow data submitted by Hill and Brockway is contained in a table on page 4 of the *Applicant's Response to Order for Augmentation of the Record*. On April 23, 2002, C.E. Brockway measured 3.70 cfs in the "No 3" ditch, presumably the #3 North Ditch. On June 26, 2003, C.E. Brockway measured 4.3 cfs in the "Lower South" ditch, presumably the #2 South Ditch. No other flows were measured on these days, and there is no other indication in the record whether water was flowing in any of the other ditches.

On October 8, 2003, Hill recorded information about the Upper North Ditch, the #3 North Ditch, and the #1 North Ditch. Two flow values are recorded for the Upper North Ditch. One flow value is recorded for the #3 North Ditch and one flow value is recorded for the #1 North Ditch. The third column of the table is titled "Flume and Head." The column boxes for the #3 North Ditch and the #1 North Ditch both contain the words "dry" and "high water." The narrative following the table discusses determination of flows using "high water marks on the flumes." Without any additional information, the most logical conclusion is that Hill determined the head in a dry measuring flume based on a high water mark at the approximate point of measuring head. There was probably no water in the flumes at the time of the reading.

Interpretation of the Upper North Ditch readings is more troubling. The first box in the "Flume and Head" column for the Upper North Ditch describes the flume and a measured head in the flume. There is no indication whether the recorded flow is based on a measurement of actual water head in the flume. The second box in the "Flume and Head" column for the Upper North Ditch uses the words "high water" and specifies an increased head of water. If water was flowing in the measuring flume during the first measurement, it is possible that the headgate could have been adjusted to divert additional "high water." It is more likely, however, based on the pattern of dry, high water estimates in the #3 North and the #1 Ditches that Hill also measured a high water mark above the observed flow in the flume and calculated the maximum flow based on the dry high water mark, not actual flow.

The narrative following the table states that Hill estimated that "there appeared to be about half as much flow in the creek, downstream of the Upper North Diversion, as in the Upper North flume." The remaining flow in the stream was not measured, however. The narrative states that "about 5.0 cfs (3.3 + 1.7) cfs was in the stream below the Upper North Diversion." This statement is not consistent with the prior statement. The measured flow in the Upper North Ditch was 3.3 cfs, leaving an estimated 1.7 flowing in Fish Haven Creek. The narrative states that there was some water in one of the south ditches that was not measured, and Fish Haven Creek was dry "at the highway crossing." The flow in Fish Haven Creek was 3.3 cfs plus some additional unknown amount. There may not have been any more water available for beneficial

use. At best, the information marginally corroborates the Fish Haven Creek measurement by Hill in July 2003, and may actually reflect declines in the Fish Haven Creek flows.

There was no measurement of Fish Haven Creek flows, and one cannot add 3.3 cfs, 5.3 cfs, and 5.3 cfs, and conclude that there was 13.9 cfs flowing in the three north ditches on October 8, 2003.

Gaps or conflicts in the tabular and narrative explanations of the data raise enough doubts about the data that it was not used in the original preliminary order. Again, at best, the information reflects a flow rate of from 3.2 to possibly 5.0 cfs in all of Fish Creek on October 8, 2003.

Finding no. 27 issue: Characterization of Leon Howell's testimony as "information about historic flows" should be "clarified that Howell has taken no measurements, has no historic flow data, and provided general testimony concerning historic flows based only upon his visual observation of creek flows."

Response: Howell's long time acquaintance with flows of Fish Haven Creek and his many years as a water user and an officer of the Fish Haven Water Users Company qualify him to testify about historical water availability. The discounting language requested is not accepted by the hearing officer.

Finding no. 30 issue: Finding 30 should clarify that a full amount of water to all the ditches all the time means five cfs for all five ditches.

Response: Finding 30 is almost a direct quote of Howell's testimony. The intent of the statement is not different from the clarification offered by counsel. The quantity of 5.0 cfs for each of the five ditches (25.0 cfs total) is an approximation because water flows in the ditches have not been measured historically. The additional clarifying language is added as an approximation of the flow that the Fish Haven Water Users Company tries to divert to the ditches when there is sufficient water to supply the flow.

Finding no. 32 issue: The hearing officer should expressly discount the testimony of Leon Howell by finding that his testimony was only based on "visual observation," he "never performed any measurements," he "has no education or experience as an engineer or hydrologist," and he is "unfamiliar with and did not understand the terms 'consumptive use' or 'depletion.'"

Response: Howell's qualifications and the reasons for accepting his testimony are explained in finding of fact 29. The reason for Howell's expression of concern about sufficiency of water is contained in the second sentence of finding of fact no. 32, which restates Howell's testimony almost verbatim that "during some years, water was taken out of the upper ditches, and the *upper north* and upper south *ditches received absolutely no water the entire year.*" The hearing officer listened to this part of the record several times, listened to the cross examination

of Howell, and the testimony of other witnesses who might have known or contributed information related to Howell's testimony about water availability. His testimony was unchallenged in cross-examination and it was uncontroverted in the record. The majority of the shares held by Johnson on behalf of Sam's Hollow are associated with the Upper North Ditch. It is not clear in the record why the water was not delivered to the Upper North Ditch during some years, but it was not. Nondelivery of water for shares associated with the Upper North Ditch would jeopardize the ability of Sam's Hollow to fully mitigate after substantial build out. The finding of fact will stand without amendment.

Finding no. 37 issue: The hearing officer improperly discounted the weight that should be given to the affidavits of Dunford and Transtrum.

Response: The hearing officer in any contested matter is responsible for weighing the evidence. In assigning more or less weight to evidence, the hearing officer should explain the reasons for the weight given. The decision states that the affidavits can be reconciled with Howell's testimony but gives greater weight to Howell's testimony about historical availability of water. Finding of fact 37 explains the reasons for the assignment of weight. Finding of fact 37 will not be amended.

Finding no. 38 issue: Finding of fact 38 is inconsistent with finding of fact 30 because it doesn't absolutely establish the flows in a good water year as water in all of the ditches all of the time at a rate of 5.0 cfs for each of the five ditches.

Response: Finding of fact 38, along with findings of fact 39 and 40 attempt to generally discuss three groupings of water years: good water years, typical water years, and poor water years. These groupings are not absolute. Howell's estimate of a good water year "once in every 20 years" is not absolute either. Nonetheless, the reference in finding of fact no. 38 to a 20-year "good water year" recurrence is redundant, and will be eliminated.

Finding no. 40 issue: The determination of water availability during poor water years should expressly discount testimony of Howell by stating that it was based on "his visual observation, not based upon any measurements or flow data." The reference to water unavailability in the Upper South Ditch is irrelevant.

Response: The basis for the determination of water availability and the weight given to Howell's testimony is explained in the decision and previous responses. No further discussion of Howell's testimony is necessary in Finding of fact 40. The reference to the Upper South Ditch will be eliminated.

Finding no. 45, 46, and 47 issue: The findings misinterpret the evidence and testimony of Brockway and therefore are clearly erroneous.

Response: The hearing officer reviewed the testimony of Brockway about Applicant's Exhibit no. 13 twice after hearing the testimony first-hand. Despite reviewing the testimony, the

hearing officer could not reconcile the computations in the exhibit with the testimony of Brockway and other witnesses given at the hearing. Confusion about Applicant's Exhibit 13 was one of the main reasons the hearing officer asked that the record be augmented. The modifications to Applicant's Exhibit No. 13 did not reconcile the conflicts. The confusion is explained in findings of fact nos. 46 and 47. In addition, the computations are based primarily on assumed numbers and some information gleaned from Leon Howell prior to the hearing, a witness whose testimony the applicant is attempting to discredit. Finding of fact nos. 45, 46, and 47 will not be amended.

Finding no. 48 & 49 issue: Brockway's assumption of 0.59 cfs is approximately 10 percent of the flow measured in Fish Haven Creek by Hill in July 2003 and the 13.9 cfs he measured in October of 2003, and even at these low flow rates, there is sufficient water to satisfy the mitigation requirement 100% of the time.

Response: Hill's measurements have previously been discussed. There is no evidence that 13.9 cfs was measured and flowing in Fish Haven Creek in October 2003. Howell testified that there were years when no water was delivered to the Upper North Ditch during the entire irrigation season. While 0.59 cfs is a smaller flow rate of water than those previously assumed, delivery of 0.59 cfs still assumes continuous flow in all three north ditches for the entire irrigation season without rotation from ditch to ditch and does not take into account Howell's testimony about a shortage of water in some years for the Upper North Ditch. The addition of the reduced, but assumed, flow rate does not sufficiently rehabilitate Applicant's Exhibit no. 13.

Finding no. 50 issue: A statement about the tolerance of domestic users to curtailment is in error and is not supported by the evidence.

Response: The purpose of administrative law is to bring the expertise of the agency to bear on the decision making process. In reviewing the sufficiency of water and public interest issues, IDWR should determine whether an approval that will result in curtailments because water is not always available would serve the public interest. Sensitivity to curtailment should be a factual issue considered by IDWR in determining whether an application should be approved. Applicant's Exhibit no. 13 does not accurately predict water deliveries during a poor water year. The decision will be amended, however, to reflect that the exhibit does establish water availability during most years.

Finding no. 51 issue: Finding of fact no. 51 is a conclusion of law because it determines that water is available in most years. The finding should state that water is "sufficient in all years."

Response: Finding of fact no. 51 is a fact determined by the hearing officer after considering the testimony and evidence presented. The related conclusion of law is set forth in the Conclusions of Law portion of the decision.

Finding no. 53 issue: The equation used for determining draw down effects of the Sam's Hollow wells should be titled "Theis" not "Tyce."

Response: The misspelling is corrected.

Finding no. 59 issue: The testimony of Con Gerdis is accurate in a general sense, but additional language, as set forth in the petition, should be added.

Response: The suggested text may be accurate but adds no definitive information valuable for the decision.

Conclusion no. 10 issue: The conclusion should state that there are always sufficient surface water flows to provide mitigation. This argument is supported by previously stated arguments about the findings of fact.

Response: Conclusion of Law 10 is based on findings of fact previously discussed. The conclusion of law will not be amended.

Conclusion no. 11 issue: A conclusion that domestic users of water do not tolerate curtailment of their domestic uses of water is not accurate and cannot be supported by facts at the hearing.

Response: The conclusion of domestic sensitivity to curtailment has been previously discussed and will not be amended.

Conclusion no 12 issue: Conclusion no. 12 improperly states there is a lack of certainty about sufficient mitigation water. Even if there is uncertainty, the mitigation plan provides for addressing the uncertainty.

Response: The reasons for the lack of certainty have already been explained in the findings and the above text. Additional conditions are necessary to address uncertainty and to force attention to the supply side of the proposed mitigation.

Conclusion no. 13 issue: Forecasting water supply is an uncertain endeavor that is rarely accurate. Sam's Hollow should not be required to forecast stream flows in Fish Haven Creek.

Response: The term "forecast" refers to a determination of availability of surface water in Sam's Hollow Creek based on some scientific analysis or historical record. During the early years of development, a determination of water availability may be very simple. As the subdivision continues to develop, additional data can be gathered to more accurately predict water availability. As the development approaches full build out, this additional data can be used to predict any possible water shortages. Forecasting, as explained, is not an onerous burden, but simply requires Sam's Hollow to review indicators of water availability and apprise its users of possible shortages during the upcoming water use period.

Conclusion no. 14, 15, 16, and 17 issue: These quotations of statutory language are unnecessary.

Response: The quotes are statutes, and are relevant to conditions in the Order. The conditions will be discussed later.

Conclusion no. 18 issue: Curtailment of a statutory claim is “inconsistent with historical administration of water in the Bear River Drainage by the Water Master.”

Response: Nonregulation of the tributaries to the Bear River in the past is not, by itself, protection against regulation as required by statute.

Order Condition no. 3 issue: There is no legal basis for IDWR to “impose a condition mandating that ‘project construction shall commence within one year,’ or requiring that construction ‘proceed diligently to completion.’”

Response: Idaho Code § 42-204 states:

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating twenty-five (25) cubic feet or less per second must, within one (1) year from the date upon which said permit issues from the office of the department of water resources, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances, over which he has no control.

Order Condition no. 4(a) and (b) issue: Forecasting of water availability is not necessary and unduly burdensome.

Response: Forecasting will focus early attention on the possible need for conservation and possible curtailment.

Order Condition no. 4(c),(d),(e),(f),(g) issue: The provisions for curtailment, responsibility for oversight and curtailment, design and location of measuring devices and delivery works, and the frequency of measuring and reporting are contained in the mitigation plan, and the requirement that these be included in a water management and operation plan is redundant and burdensome.

Response: The mitigation plan generally describes these activities, but does not provide sufficient detail for future subdivision activities and IDWR review. The water management and operation plan will provide this additional detail.

Order Condition no. 7 issue: There is no need to seek IDWR approval of a transfer for mitigation or placing water in the water supply bank for mitigation.

Response: Diversion of water for a mitigation use under an irrigation water right is not authorized by the water rights. The diversion of water for mitigation purposes must be recognized by the beneficial use description of the water right.

Order Condition no. 10 issue: An owner of a lot or several lots should be entitled to irrigate the lot(s) even though no home is built on the lot(s).

Response: IDWR has applied the definition of domestic contained in Idaho Code § 42-111. Irrigation beyond the domestic limitations should be described as an irrigation use component in the water right. Idaho Code § 42-111 allows the diversion of up to 2,500 gallons per day for irrigation not associated with a home. The condition will be changed to allow irrigation of ½ acre per day associated with a constructed home on a single lot, or a total use of 2,500 gallons per day for all uses by a single landowner regardless of the number of lots owned or whether a home is built.

Based on the above analysis, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application to appropriate water no. 11-7481 was filed with IDWR by Sam's Hollow Water Company (Sam's Hollow) on November 8, 2001. The application seeks the appropriation of ground water for domestic, commercial, and irrigation purposes for Phase I of the Bear Lake Haven Subdivision (the subdivision), located on the up-sloping foothills just west of Fish Haven, Idaho.

2. Application to appropriate water no. 11-7481 proposes the following:

Flow Rate:		Uses:	
Domestic	1.33 cfs	Purpose of Use:	Domestic
Commercial	0.02 cfs	Purpose of Use:	Commercial
Total:	1.35 cfs	Period of Use:	Year-round
Points of Diversion:	SWSE	Section 10	T16S, R43E
	SESW	Section 11	
	NWNE	Section 15	
Domestic Place of Use:	S1/2SE	Section 10	T16S, R43E
	SWSE, S1/2SW	Section 11	
	NWNE	Section 14	
	NE1/4	Section 15	
Commercial Place of Use:	SWSE	Section 11	T16S, R43E
	NWNE	Section 14	

3. After publication, application no. 11-7481 was protested by PacifiCorp, the United States Fish & Wildlife Service, and Leon Howell.

4. Because of a larger dispute about the conjunctive management of ground water and surface water in the Bear River Basin, and protests filed against many applications to appropriate water, IDWR encouraged the existing water right holders and potential future water users to propose a management plan for the administration of existing water rights and the processing of new applications to appropriate water in the Bear River Basin. The IDWR delayed processing of application no. 11-7481 while the Bear River Management Plan was being developed.

5. On January 11, 2002, Sam's Hollow filed application to appropriate water no. 11-7491. Application no. 11-7491 proposes additional diversion of ground water for domestic use in Phase II of the subdivision.

6. Application no. 11-7491 proposes the following:

Flow Rate:	1.22 cfs	Purpose of Use:	Domestic
Period of Use:	Year-round		
Points of Diversion:	NWSW	Section 2	T16S, R43E
	SWNE	Section 10	
	NWNW	Section 11	
Place of Use:	NWSE, SW1/4	Section 2	T16S, R43E
	NE1/4	Section 10	
	W1/2NE, N1/2NW	Section 11	

7. Application no. 11-7491 was not immediately published because of the pending proposal for and adoption of the management plan.

8. On February 24, 2003, IDWR adopted a management plan for the Bear River Basin. The Bear River Management Plan (hereinafter referred to as "the management plan") is made a part of the hearing record, and is incorporated therein.

9. The management plan provides that existing applications will be considered by IDWR if the applicant submits a mitigation plan for depletions of Bear River Basin water. A simplified method of satisfying mitigation requirements is detailed on page 7 of the plan. For domestic and commercial uses, a cited standard for determining depletions for domestic and commercial uses is "Procedures for Estimating Depletions in the Bear River Basin in Idaho" prepared by Robert W. Hill (Hill) of Utah State University. This document, referred to in the management plan, was amended after the management plan was adopted by IDWR. The latest version of the procedural guidelines for determining depletions is dated January 27, 2003, and was received into evidence as Applicant's Exhibit No. 18.

10. Sam's Hollow filed a plan of mitigation to satisfy the additional requirements of the management plan. The plan of mitigation followed the guidelines for submitting a simplified plan.

11. After adoption of the management plan, IDWR published notice of application no. 11-7491. After publication, application no. 11-7491 was protested by PacifiCorp, Bear Lake Watch, Inc., Leon Howell, and the St. Charles Irrigation Company.

12. A hearing was conducted on October 8, 2003 for the contested case. Prior to commencement of the hearing, Bear Lake Watch, Inc. withdrew its protest to application no. 11-7491 and the U.S. Fish & Wildlife Service withdrew its protest to application no. 11-7481.

13. The following exhibits were received into evidence at the hearing, unless otherwise noted below. The applicant was the only party that offered exhibits.

Applicant's Exhibit No.	Description of the Exhibit
1	Articles of Incorporation of Sam's Hollow Water Company
2	Internal Revenue Service Tax Exemption Letter for Sam's Hollow Water Co.
3	Development and Operating Agreement between Sam's Hollow Water Co. and C. Howard Johnson
4	Agreement between Fish Haven Water Users Co., Sam's Hollow Water Co., and C. Howard Johnson
5	Plats, maps, and aerial photos of the proposed development
6	Application for Permit no. 11-07481 and supporting documents
7	Application for Permit no. 11-07491 and supporting documents
8	Affidavit of Glen Transtrum
9	Affidavit of Hulme Dunford
10	Guidelines for Mitigation of New Groundwater Development in the Lower Bear River Basin in Idaho
11	Well Pumping Test Reports
12	<i>Not offered into Evidence</i>
13	Fish Haven Water Users Co. Water Shares & Water Availability
14	Depletion Analysis and Narrative
15	<i>Not offered in evidence</i>
16	Letter Requesting Change of Ownership of Stock Certificates
17	Settlement Agreement
18	Procedures for Depletion by Robert W. Hill, January 27, 2003

14. At the hearing, PacifiCorp executed a settlement agreement with Sam's Hollow that resulted in a withdrawal of its protest. Nonetheless, the parties agreed that PacifiCorp could present expert testimony at the hearing that would corroborate some of the information presented by the applicant. The settlement agreement was received into evidence as Applicant's Exhibit No. 17.

15. Connie Gerdis (Gerdis), a partner in the Bear Lake Haven development, estimated that total build-out of the proposed development will take approximately 20 years. Gerdis also stated, however, that total build-out may take longer than 40 years.

16. Gerdis testified that C. Howard Johnson (Johnson), his partner and principal developer of the subdivision, owns approximately 700 acres on the slopes west of Fish Haven that are proposed for the Bear Lake Haven development. He also testified that Johnson owns 140.5 shares of stock in the Fish Haven Water Users Company. The Fish Haven Water Users Company is a non-profit corporation that delivers surface water diverted from Fish Haven Creek to its shareholders. The Fish Haven Water Users Company claims it perfected a right through beneficial use of the water from Fish Haven Creek. The company filed a statutory claim for its use of water, numbered in IDWR files as 11-4022.

17. Statutory claim no. 11-4022 was filed by Fish Haven Water Users Company under Idaho Code § 42-243 as a water right perfected by beneficial use. Claim no. 11-4022 asserts a right to divert 29.6 cfs from Fish Haven Creek and a spring tributary to Fish Haven Creek for the irrigation of 1212 acres. The lands proposed for development in the subdivision lie within the area served by Fish Haven Water Users Company.

18. Dr. Charles Brockway (Brockway) testified that approximately 120 acres are irrigated with Fish Haven Water Users Company water within 700 acres owned by Johnson, and proposed for development. Johnson owns approximately 1.1 shares per irrigated acre.

19. The mitigation plan offered by Sam's Hollow proposes retirement of irrigated acreage as the proposed subdivision develops. The portion of Johnson's Fish Haven Water Users Company water that would have irrigated the retired acreage will be delivered to Bear Lake.

20. Sam's Hollow, Fish Haven Water Users Company, and Johnson, executed an agreement in which Fish Haven Water Users Company consents to the use of a portion of its water right for mitigation purposes. The agreement was received into evidence as Applicant's Exhibit No. 4. The agreement requires that any water used for mitigation must continue to be diverted through the ditches of the Fish Haven Water Users Company as the water has traditionally been delivered and that Johnson must follow the traditional scheme of rotation. Once the mitigation water has been diverted through the Fish Haven Water Users Company ditches, it will be delivered to Bear Lake.

21. Fish Haven Water Users Company delivers water to its shareholders through five ditches. The locations of the ditches are depicted on Applicant's Exhibit No. 5. Three ditches divert water from the north bank of Fish Haven Creek. The northern ditches in upstream-to-downstream order are: Upper North Ditch, #1 North Ditch, and #3 North Ditch. Two ditches divert water from the south bank of Fish Haven Creek. The southern ditches in upstream-to-downstream order are: Upper South Ditch, and #2 South Ditch.

22. Water delivered to Johnson is diverted from the north side of the creek through the Upper North Ditch, the #1 North Ditch, and the #3 North Ditch. Johnson owns shares associated with each ditch as follows:

Upper North Ditch	99.5 shares of stock
#1 North Ditch	20 shares of stock
#3 North Ditch	21 shares of stock

23. At full build-out, Brockway determined that Sam's Hollow must reduce its consumption of surface water by 110 acre-feet. Based on the procedures for estimating depletions developed by Hill, Sam's Hollow would be required to cease irrigating 90 of the 120 acres presently irrigated.

24. The mitigation plan offered by Sam's Hollow contemplates a staged retirement of irrigated acreage and delivery of surface water to Bear Lake to compensate for the staged development. As additional homes are built, and the diversion of ground water increases, additional surface water will be delivered to Bear Lake.

25. The mitigation plan proposes measurement of ground water diverted to the developed portion of the subdivision and measurement of the amount of water delivered to Bear Lake for purposes of mitigation.

26. Robert W. Hill (Hill) testified that on July 30, 2003, he measured the flow in Fish Haven Creek above all diversions. The measured flow was 5.39 cubic feet per second.

27. Information about historical flows and patterns of diversion was presented from four sources: Leon Howell, Glenn Transtrum (Transtrum), J. Hulme Dunford (Dunford), and Brockway. Leon Howell testified directly from his personal knowledge and observations. Information from Transtrum and Dunford was submitted as affidavits. The affidavits were received into evidence after the protestants stipulated to their admission. Transtrum and Dunford did not testify. Finally, Brockway testified about historical flows and patterns of delivery after talking to Leon Howell and other shareholders or officers of Fish Haven Water Users Company.

28. Dunford farmed and irrigated the Johnson property from 1982 through 1997. Transtrum farmed and irrigated the Johnson property from 1998 through 2003. Both affidavits contain verbatim statements about historical flows and patterns of diversion:

The number of water turns available throughout the summer varied depending on the amount of water available in Fish Haven Creek based on runoff conditions. In good years, the Company was able to keep all ditches full and there was ample water to supply irrigation needs. During poor years and particularly during the later summer months as the water dropped, the available water would be rotated or alternated through the various ditches so shareholders would receive their proportionate share.

29. Leon Howell (Howell) is a lifelong resident of Fish Haven and is a user of water delivered by Fish Haven Water Users Company. Howell has been acquainted with water deliveries in Fish Haven Water Users Company for approximately 70 years. Howell currently serves as the secretary of the Fish Haven Water Users Company.

30. Howell testified that, historically, water was only available to deliver the full amount of water to all the ditches for the entire irrigation season approximately one year in every twenty years. He testified that, at the beginning of the irrigation season, Fish Haven Creek water is initially delivered to one ditch. When flows in Fish Haven Creek begin to rise, water is turned into two ditches, then three ditches, and so on, until all the ditches are receiving sufficient water. Fish Haven Creek Water Users Company attempts to deliver approximately 5.0 cfs to each of the ditches when water is available.

31. Howell testified that, as flows in Fish Haven Creek decline, water is no longer delivered to all the ditches. Depending on available flow in Fish Haven Creek, diversion of water into one, two, three, or four ditches may be cut off. Water is rotated between the ditches when there is insufficient flow in Fish Haven Creek to fill all five ditches.

32. Howell expressed concern that there will not be sufficient water to mitigate for the water uses of the subdivision. Howell testified that, during some years, water was taken out of the upper ditches, and the upper north and upper south ditches received absolutely no water the entire year.

33. Howell testified that, when water is delivered to a ditch operated by the Fish Haven Water Users Company, the water users who receive water from the ditch each divert the entire flow of the ditch for three hours for every share they own that is designated to that ditch. When one of the water users finishes irrigating for the allotted time based on the number of shares he owns in the ditch, the next water user, in turn takes all the water in the ditch for his allotment.

34. Howell testified that during 2003, the water users were able to fully rotate the water four times. He testified that in 2002, the water users were only able to fully rotate the water three times.

35. Howell testified that, during the 2003 irrigation season, Fish Haven Water Users Company diverted water in all of its ditches for 17 days. Water was rotated between the ditches the remainder of the irrigation season.

36. Howell's testimony indicated that the season for irrigation begins as early as April 15th, and extends until approximately October 15th.

37. The affidavits of Dunford and Transtrum can probably be reconciled with the testimony of Howell. Nevertheless, the hearing officer finds that the affidavits reflect optimism

about the water supply not portrayed in Howell's testimony. To the extent there is any conflict between Howell's testimony and the statements of Dunford and Transtrum, the hearing officer finds Howell's testimony more persuasive because: (a) the statements of Dunford and Transtrum were verbatim, indicating that they did not individually write the language, (b) there is no evidence that Dunford and Transtrum have the intimacy and exposure to the delivery system that Howell has, (c) the statements by Dunford and Transtrum lacked the specificity of Howell's testimony, and (d) Dunford and Transtrum did not testify and were not subject to examination.

38. During good water years, water flows in Fish Haven Creek are sufficient to deliver water in all of the ditches simultaneously for most or all of the irrigation season.

39. During typical water years, water is delivered simultaneously through all five ditches during the high spring runoff, and when the high flows diminish, water diverted from Fish Haven Creek is rotated between the five ditches, sometimes several at a time, and sometimes one at a time.

40. During some poor water years, flows in Fish Haven Creek may be so low that the Upper North Ditch does not receive any water and the other ditches may have a very limited water supply.

41. Howell testified that the organizers of the Fish Haven Water Users Company intended to issue one share of stock for each of 1,426 acres.

42. Leon Howell testified that assessments were paid in 2003 for the following shares of stock dedicated to the following ditches:

Upper North Ditch	249.5 shares
#3 North Ditch	255.42 shares
#1 North Ditch	133.75 shares
Upper South Ditch	325.84 shares
#2 South Ditch	<u>318.51 shares</u>
Total Assessed Shares	1,283.02 shares

43. Brockway prepared Applicant's Exhibit No. 13 to estimate the availability of water in Fish Haven Creek. Applicant's Exhibit No. 13 was revised in response to the order to augment the record. In computing the estimates, Brockway used information gleaned from discussions with officers of, or water users of water delivered by Fish Haven Water Users Company, or his own field reconnaissance observations. No numerical data was gathered or measured to compute values in Applicant's Exhibit No. 13.

44. In the amended Applicant's Exhibit No. 13, Brockway uses the value of three hours of water delivery to each shareholder and the number of assessed shares assigned to each ditch as a basis to compute total time for all the water users diverting water from one of the ditches to rotate through one cycle of deliveries on the ditch. Brockway used the number of

Johnson's shares allocated to each ditch to compute the time Johnson would be entitled to receive water during a rotation cycle in each ditch. Finally, Brockway also conservatively used an irrigation season of 150 days, which is well within the irrigation season estimated by Howell.

45. Other assumptions are not clear, however. Brockway states "Rotation Schedule 31 days to rotate to all users." The information submitted to augment the record implies that the 31 days is an approximate rotation period if water is being diverted into all the ditches. This implication is also supported by the 31.19 days of rotation for the Upper North Ditch and the 31.93 days of rotation for the #3 Ditch. The exclusion of the south ditches also implies that Brockway's calculations assume all of the ditches are receiving water simultaneously.

46. The rotation period for one cycle in #1 North Ditch is 16.72 days, approximately half the time of the rotation cycles for the other northern ditches. If the assumption is that all of the ditches are receiving water, then the water users receiving water in the #1 North Ditch would receive approximately twice as much water over the irrigation season per share of stock as a water user owning shares in the Upper North Ditch and the #3 North Ditch. This disparity is reflected in Brockway's calculations of the time Johnson is entitled to water in the #1 North Ditch and the volume of water he is entitled to receive during an irrigation season.

47. Brockway's computations do not take into account Howell's testimony that: (a) the water is rotated between ditches in low water years, (b) in 2002, the water was rotated three times for all the users and four times in 2003, and (c) there are some years when there is no water delivered to the Upper North Ditch.

48. Finally, Brockway assumes flow rates for each of the north ditches to calculate possible total annual volumes of water. In the amended Applicant's Exhibit No. 13, he introduced a flow rate of 0.59 into each ditch to show that, even at a significantly reduced flow rate, there would be sufficient water volume for mitigation proposed by Sam's Hollow.

49. Brockway's estimates may be within reasonable ranges for a high water year or even a typical year. The hearing officer finds that the Applicant's Exhibit No. 13 does not reasonably estimate water availability for low water years because the estimates assume: (a) there is flow in all of the ditches all of the time, (b) some shares of stock are entitled to significantly more water over the course of the irrigation season than other shares of stock, (c) the number of rotations in his calculations exceed the number of rotations during the past two years, and (d) the testimony of Howell that water is sometimes not delivered at all to the Upper North Ditch.

50. Domestic water users are the least tolerant of all water users in accepting water shortages. As a result, water availability, both for the ground water supply and the surface water mitigation, should approach certainty. Estimates of water availability for mitigation should be based on the minimum available water. Applicant's Exhibit No. 13 does not adequately estimate these minimum values. The hearing officer finds that Applicant's Exhibit No. 13 does not establish sufficient certainty of flows in Fish Haven Creek for mitigation in poor water years.

51. Nonetheless, the hearing officer finds that Johnson owns sufficient shares of stock in Fish Haven Water Users Company to deliver the quantity of water needed for mitigation in most years. This conclusion is based on the testimony of Howell and the affidavits of Dunford and Transtrum.

52. Sam's Hollow drilled two test wells within the proposed Phase I of the subdivision. Brockway tested both of these wells by conducting a step-interval pump test. By measuring drawdowns in the wells and corresponding drawdowns in a well near well number one, Brockway estimated the characteristics of the aquifer and the impacts on other wells.

53. Brockway testified that the nearest domestic well is 1,000 feet away, and according to computations using the Theis equation, the draw down impacts on this and other wells would be negligible.

54. Brockway testified that the aquifer in the area is similar to the aquifers south of the proposed development in the Bear Lake West Subdivision. Based on his analysis and experience with the Bear Lake West wells, Brockway testified that the aquifer at the location of the proposed wells would produce sufficient water to supply the quantities for the purposes sought by the applications.

55. Gerdis testified that he and his partner, Johnson, own the land upon which the development is proposed without debt or encumbrance, and that Johnson and he have sufficient cash to develop the property.

56. The Bear Lake Haven Subdivision has been presented to the Bear Lake County Planning and Zoning Commission for a conditional use permit under the Bear Lake County zoning ordinances. The planning and zoning commission has expressed favorable support for the subdivision. Acquisition of the water right is the final step for approval of the conditional use permit.

57. A portion of the subdivision is located within the Fish Haven Sewer District. The portion of the subdivision within the sewer district most closely borders U.S. Highway 89, approximately one-quarter mile west of the north-south highway. Homes within the sewer district will be served by the sewer district. The sewage from residences outside the sewer district will be discharged to septic systems. The lot sizes of homes outside the sewer district will all exceed three acres. The residential lots must be at least ½ acre in surface area for septic tank approval, and then only if soil conditions are favorable.

58. Gerdis and Alex Hudson, an engineer hired to track the development, both testified that the subdivision and the additional homes would economically benefit Bear Lake County and the surrounding area.

59. Gerdis testified that Sam's Hollow would be controlled and operated by Johnson until it can be turned over to a homeowners association. After the corporation is turned over to the association, the association will be responsible for the monitoring and mitigation required by the offered mitigation plan.

60. Howell and Glen Rich both expressed concern about the ability of the homeowners association to properly measure, monitor, repair the measuring devices, record the measurements, and properly report them. They expressed concern that the homeowners association would not be willing to curtail water use to the domestic units during times of shortage, and that IDWR would not have the resources to administer in times of shortage.

61. Water District No.11, Bear River, was created to administer and regulate the waters of the Bear River. Fish Haven Creek is included in Water District No. 11 as a stream tributary to the Bear River.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. The applicant bears the burden of proof for the factors IDWR must consider in Idaho Code § 42-203A.

3. The drawdown analysis and evaluation of the aquifer by Charles Brockway established that the proposed appropriations of ground water would not injure other water rights authorizing the use of ground water in the Fish Haven area.

4. The evaluation of water availability in the aquifer by Charles Brockway established that there is sufficient ground water to supply the quantities of water sought by the applications.

5. Based on the testimony of Connie Gerdis, the applicant has sufficient financial resources to complete the project.

6. The applicant has expended significant resources in acquiring the property, surveying, preparing proposed development documents, and submitting the documents to the Bear Lake County authorities. The application is not filed for purposes of delay or in bad faith.

7. The effects on the public water resource of supplying ground water for domestic purposes related to recreational properties in Bear Lake County is consistent with the local public interest as defined by Idaho Code § 42-202B(3).

8. Sam's Hollow will employ methods of water application that will conserve the waters of the state of Idaho.

9. The Bear River Management Plan requires that an applicant mitigate the general Bear River hydrologic system for depletions to the surface water sources in the drainage.

10. The mitigation plan proposed by Sam's Hollow satisfies the general requirements of the management plan. Assumptions underpinning the plan are overly optimistic, however. The proposed mitigation plan assumes an adequate supply of surface water in Fish Haven Creek to supply the 120 acre-feet to Bear Lake after full build-out. The testimony of Leon Howell and Stan Rich established that, during low water years, there might not be sufficient surface water to mitigate fully for depletions caused by the proposed ground water withdrawals.

11. Domestic users of water do not tolerate curtailment of their domestic uses of water. The domestic user's expectation of a continuous water supply increases the level of certainty when IDWR considers whether the water supply is sufficient for the purpose sought.

12. Lack of certainty of mitigation supply water is not a cause for rejection of the application, however, greater certainty can be established by conditions of approval.

13. Certainty can be provided by requiring early forecasting and forced curtailment based on the forecasts. Certainty can also be provided by preparation of a water management and operation plan for the development and the homeowner's association.

14. Idaho Code § 42-108 authorizes a change in nature of use of a water right. Section 42-108 states, in pertinent part:

Any person desiring to make such change of . . . nature of use of water shall make application for change with the department of water resources under the

provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the . . . nature of use . . . of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code.

15. Idaho Code § 42-222 describes the details of an application for transfer and the factors that must be considered by IDWR in reviewing a proposed transfer.

16. Idaho Code § 42-1764(1) states that “[t]he approval of a rental of water from the water supply bank may be a substitute for the transfer proceeding requirements of section 42-222, Idaho Code.

17. Idaho Code § 42-607 states, in pertinent part:

It shall be the duty of said watermaster to distribute the waters of the public stream, streams or water supply, comprising a water district, among the several ditches taking water therefrom according to the prior rights of each respectively, in whole or in part, and to shut and fasten, or cause to be shut or fastened, under the direction of the department of water resources, the headgates of the ditches or other facilities for diversion of water from such stream, streams or water supply, when in times of scarcity of water it is necessary so to do in order to supply the prior rights of others in such stream or water supply; provided, that any person or corporation claiming the right to the use of the waters of the stream or water supply comprising a water district, but not owning or having the use of an adjudicated or decreed right therein, or right therein evidenced by permit or license issued by the department of water resources, shall, for the purposes of distribution during the scarcity of water, be held to have a right subsequent to any adjudicated, decreed, permit, or licensed right in such stream or water supply, ...

18. If the claim to water right no. 11-4022 were regulated by the watermaster of the Bear River, all permitted, licensed, and decreed water rights bearing priority dates later than the priority date asserted by claim no. 11-4022 would be delivered before any water would be delivered for claim no. 11-4022. In times of shortage and regulation of water rights in the Bear River Basin, water right no. 11-4022 could be curtailed.

ORDER

IT IS HEREBY ORDERED that applications to appropriate water nos. 11-7481 and 11-7491 are **APPROVED** subject to the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before **May 1, 2009**.

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. Prior to diversion of water under this right and prior to construction of any additional wells a water management and operation plan for Sam's Hollow and any successor must be submitted in writing and approved in writing by IDWR. The water management and operation plan shall contain the following components: (a) a description of a method for forecasting flows in Fish Haven Creek using measured Fish Haven Creek data or data from a comparable basin; (b) a fixed date each year, no later than April 1, when the volume of water to be diverted under this right during the upcoming year is declared and the forecasted streamflows will be compared to projected water use within the subdivision and; (c) a description of curtailment or other water conservation measures that will be employed in times of mitigation water shortages, and how water users will be notified prior to May 1 about restricted water use in the year of predicted shortage; (d) a description of how the curtailment and conservation measures will be monitored and enforced; (e) a description of the entire flow path of mitigation water, including ditches, pipes, culverts, control structures, and how the system will operate, beginning at the diversion from the Upper North Ditch, the #1 North Ditch, and the #3 North Ditch, and ending at the discharge to Bear Lake; (f) a specific description and the location of each measuring device and how each measuring device will be installed and maintained; (g) a description of the frequency of measuring, comparing, and reporting; (h) a list of those to whom the reports will be submitted; (i) the identity of the specific officer, by title, in the association or corporate organization, that will be responsible for the oversight of system operation; and (j) an alternate plan for mitigation water or curtailment should statutory claim no. 11-4022 ever be curtailed by the watermaster of the Bear River. In addition, the water management and operation plan shall also contain an operations manual for the benefit of employees working for Sam's Hollow that describes duties relative to operation, monitoring, and reporting.

5. The water management and operation plan must incorporate the components of the Settlement Agreement with PacifiCorp, dated October 7, 2003, related to water delivery, measurement, reporting, and retirement of irrigated acreage as the Bear Lake Haven Subdivision develops.

6. The provisions of the water management and operation plan will be incorporated as conditions of the permit to appropriate water. Failure of the permit holder to adhere to the provisions of the water management and operation plan, including having an active and available officer of the association assigned to oversee the water management and operations plan, is cause for IDWR to issue a notice of violation and/or cease and desist order to the permit holder, and to cancel the permit to appropriate water. The provisions of the water management and operation plan may be amended without amending the water right permit under Idaho Code § 42-211, but all changes must be approved in writing by IDWR.

7. The use of water diverted by Fish Haven Water Users Company under water right no. 11-4022 for mitigation purposes must be represented by (a) an approved transfer recognizing the change in nature of use from irrigation to mitigation, or (b) an approved lease of a portion of water right no. 11-4022 to the Idaho Water Supply Bank for mitigation purposes. Diversion and use for mitigation without written approval by IDWR will be an illegal diversion of water.

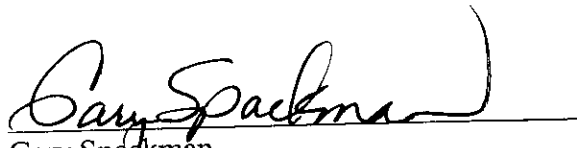
8. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 11.

9. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

10. The irrigation occurring under this domestic use shall not exceed $\frac{1}{2}$ acre within each platted subdivision lot upon which a home has been constructed. Alternatively, an owner of property may divert and use no more than 0.04 cfs and 2,500 gallons per day for all uses he may make on all property he may own in the subdivision. This right does not provide for irrigation of common areas.

11. Domestic use is for 63 homes, 256 condominium units, and 4 commercial units under water right no. 11-7481, and 241 homes under water right no. 11-7491.

Dated this 24th day of May, 2004.


Gary Spackman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May, 2004, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following::

Randall Budge
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, ID 83204-1391

Claudia Conder
Water Rights Administrator
PacifiCorp
1407 W. No. Temple Ste 110
Salt Lake City, UT 84140

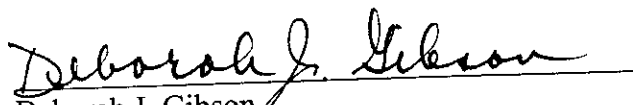
Leon Howell
Box 117
Fish Haven, ID 83287

Glenn Rich
St. Charles Irrigation Company
5473 US 89
St. Charles, ID 83272

Idaho Department of Water Resources
Eastern Region
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Deborah J. Gibson

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION)
TO APPROPRIATE WATER NOS.) PRELIMINARY ORDER
11-7481 AND 11-7491 IN THE NAME)
OF SAM'S HOLLOW WATER)
COMPANY)**

On October 8, 2003, a hearing was conducted by the Idaho Department of Water Resources (IDWR) for the contested case created by protests filed against the above applications to appropriate water. After considering the testimony, the exhibits, and additional information in the files of IDWR, the hearing officer ordered that the record be augmented with additional information about availability of water in Fish Haven Creek delivered by the Fish Haven Water Users Company, and also the means of measurement and administration of future water diversions and deliveries for mitigation. After consideration of this information, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application to appropriate water no. 11-7481 was filed with IDWR by Sam's Hollow Water Company (Sam's Hollow) on November 8, 2001. The application seeks the appropriation of ground water for domestic, commercial, and irrigation purposes for Phase I of the Bear Lake Haven Subdivision (the subdivision), located on the up-sloping foothills just west of Fish Haven, Idaho.

2. Application to appropriate water no. 11-7481 proposes the following:

Flow Rate:		Uses:	
Domestic	1.33 cfs	Purpose of Use:	Domestic
Commercial	0.02 cfs	Purpose of Use:	Commercial
Total:	1.35 cfs	Period of Use:	Year-round
Points of Diversion:	SWSE	Section 10	T16S, R43E
	SESW	Section 11	
	NWNE	Section 15	
Domestic Place of Use:	S1/2SE	Section 10	T16S, R43E
	SWSE, S1/2SW	Section 11	
	NWNE	Section 14	
	NE1/4	Section 15	
Commercial Place of Use:	SWSE	Section 11	T16S, R43E
	NWNE	Section 14	

3. After publication, application no. 11-7481 was protested by PacifiCorp, the United States Fish & Wildlife Service, and Leon Howell.

4. Because of a larger dispute about the conjunctive management of ground water and surface water in the Bear River Basin, and protests filed against many applications to appropriate water, IDWR encouraged the existing water right holders and potential future water users to propose a management plan for the administration of existing water rights and the processing of new applications to appropriate water in the Bear River Basin. The IDWR delayed processing of application no. 11-7481 while the Bear River Management Plan was being developed.

5. On January 11, 2002, Sam's Hollow filed application to appropriate water no. 11-7491. Application no. 11-7491 proposes additional diversion of ground water for domestic use in Phase II of the subdivision.

6. Application no. 11-7491 proposes the following:

Flow Rate:	1.22 cfs	Purpose of Use:	Domestic
Period of Use:	Year-round		
Points of Diversion:	NWSW SWNE NWNW	Section 2 Section 10 Section 11	T16S, R43E
Place of Use:	NWSE, SW1/4 NE1/4 W1/2NE, N1/2NW	Section 2 Section 10 Section 11	T16S, R43E

7. Application no. 11-7491 was not immediately published because of the pending proposal for and adoption of the management plan.

8. On February 24, 2003, IDWR adopted a management plan for the Bear River Basin. The Bear River Management Plan (hereinafter referred to as "the management plan") is made a part of the hearing record, and is incorporated therein.

9. The management plan provides that existing applications will be considered by IDWR if the applicant submits a mitigation plan for depletions of Bear River Basin water. A simplified method of satisfying mitigation requirements is detailed on page 7 of the plan. For domestic and commercial uses, a cited standard for determining depletions for domestic and commercial uses is "Procedures for Estimating Depletions in the Bear River Basin in Idaho" prepared by Robert W. Hill (Hill) of Utah State University. This document, referred to in the management plan, was amended after the management plan was adopted by IDWR. The latest version of the procedural guidelines for determining depletions is dated January 27, 2003, and was received into evidence as Applicant's Exhibit No. 18.

10. Sam's Hollow filed a plan of mitigation to satisfy the additional requirements of the management plan. The plan of mitigation followed the guidelines for submitting a simplified plan.

11. After adoption of the management plan, IDWR published notice of application no. 11-7491. After publication, application no. 11-7491 was protested by PacifiCorp, Bear Lake Watch, Inc., Leon Howell, and the St. Charles Irrigation Company.

12. A hearing was conducted on October 8, 2003 for the contested case. Prior to commencement of the hearing, Bear Lake Watch, Inc. withdrew its protest to application no. 11-7491 and the U.S. Fish & Wildlife Service withdrew its protest to application no. 11-7481.

13. The following exhibits were received into evidence at the hearing, unless otherwise noted below. The applicant was the only party that offered exhibits.

Applicant's Exhibit No.	Description of the Exhibit
1	Articles of Incorporation of Sam's Hollow Water Company
2	Internal Revenue Service Tax Exemption Letter for Sam's Hollow Water Co.
3	Development and Operating Agreement between Sam's Hollow Water Co. and C. Howard Johnson
4	Agreement between Fish Haven Water Users Co., Sam's Hollow Water Co., and C. Howard Johnson
5	Plats, maps, and aerial photos of the proposed development
6	Application for Permit no. 11-07481 and supporting documents
7	Application for Permit no. 11-07491 and supporting documents
8	Affidavit of Glen Transtrum
9	Affidavit of Hulme Dunford
10	Guidelines for Mitigation of New Groundwater Development in the Lower Bear River Basin in Idaho
11	Well Pumping Test Reports
12	<i>Not offered into Evidence</i>
13	Fish Haven Water Users Co. Water Shares & Water Availability
14	Depletion Analysis and Narrative
15	<i>Not offered in evidence</i>
16	Letter Requesting Change of Ownership of Stock Certificates
17	Settlement Agreement
18	Procedures for Depletion by Robert W. Hill, January 27, 2003

14. At the hearing, PacifiCorp executed a settlement agreement with Sam's Hollow that resulted in a withdrawal of its protest. Nonetheless, the parties agreed that PacifiCorp could present expert testimony at the hearing that would corroborate some of the information presented by the applicant. The settlement agreement was received into evidence as Applicant's Exhibit No. 17.

15. Connie Gerdis (Gerdis), a partner in the Bear Lake Haven development, estimated that total build-out of the proposed development will take approximately 20 years. Gerdis also stated, however, that total build-out may take longer than 40 years.

16. Gerdis testified that C. Howard Johnson (Johnson), his partner and principal developer of the subdivision, owns approximately 700 acres on the slopes west of Fish Haven that are proposed for the Bear Lake Haven development. He also testified that Johnson owns 140.5 shares of stock in the Fish Haven Water Users Company. The Fish Haven Water Users Company is a non-profit corporation that delivers surface water diverted from Fish Haven Creek to its shareholders. The Fish Haven Water Users Company claims it perfected a right through beneficial use of the water from Fish Haven Creek. The company filed a statutory claim for its use of water, numbered in IDWR files as 11-4022.

17. Statutory claim no. 11-4022 was filed by Fish Haven Water Users Company under Idaho Code § 42-243 as a water right perfected by beneficial use. Claim no. 11-4022 asserts a right to divert 29.6 cfs from Fish Haven Creek and a spring tributary to Fish Haven Creek for the irrigation of 1212 acres. The lands proposed for development in the subdivision lie within the area served by Fish Haven Water Users Company.

18. Dr. Charles Brockway (Brockway) testified that approximately 120 acres are irrigated with Fish Haven Water Users Company water within 700 acres owned by Johnson, and proposed for development. Johnson owns approximately 1.1 shares per irrigated acre.

19. The mitigation plan offered by Sam's Hollow proposes retirement of irrigated acreage as the proposed subdivision develops. The portion of Johnson's Fish Haven Water Users Company water that would have irrigated the retired acreage will be delivered to Bear Lake.

20. Sam's Hollow, Fish Haven Water Users Company, and Johnson, executed an agreement in which Fish Haven Water Users Company consents to the use of a portion of its water right for mitigation purposes. The agreement was received into evidence as Applicant's Exhibit No. 4. The agreement requires that any water used for mitigation must continue to be diverted through the ditches of the Fish Haven Water Users Company as the water has traditionally been delivered and that Johnson must follow the traditional scheme of rotation. Once the mitigation water has been diverted through the Fish Haven Water Users Company ditches, it will be delivered to Bear Lake.

21. Fish Haven Water Users Company delivers water to its shareholders through five ditches. The locations of the ditches are depicted on Applicant's Exhibit No. 5. Three ditches divert water from the north bank of Fish Haven Creek. The northern ditches in upstream-to-downstream order are: Upper North Ditch, #1 North Ditch, and #3 North Ditch. Two ditches divert water from the south bank of Fish Haven Creek. The southern ditches in upstream-to-downstream order are: Upper South Ditch, and #2 South Ditch.

22. Water delivered to Johnson is diverted from the north side of the creek through the Upper North Ditch, the #1 North Ditch, and the #3 North Ditch. Johnson owns shares associated with each ditch as follows:

Upper North Ditch	99.5 shares of stock
#1 North Ditch	20 shares of stock
#3 North Ditch	21 shares of stock

23. At full build-out, Brockway determined that Sam's Hollow must reduce its consumption of surface water by 110 acre-feet. Based on the procedures for estimating depletions developed by Hill, Sam's Hollow would be required to cease irrigating 90 of the 120 acres presently irrigated.

24. The mitigation plan offered by Sam's Hollow contemplates a staged retirement of irrigated acreage and delivery of surface water to Bear Lake to compensate for the staged development. As additional homes are built, and the diversion of ground water increases, additional surface water will be delivered to Bear Lake.

25. The mitigation plan proposes measurement of ground water diverted to the developed portion of the subdivision, a measurement of surface water diverted and delivered to the subdivision, and measurement of the amount of water delivered to Bear Lake for purposes of mitigation.

26. Robert W. Hill testified that on July 30, 2003, he measured the flow in Fish Haven Creek above all diversions. The measured flow was 5.39 cubic feet per second.

27. Information about historical flows and patterns of diversion was presented from three sources: Leon Howell, Glenn Transtrum (Transtrum), J. Hulme Dunford (Dunford), and Brockway. Leon Howell testified directly from his personal knowledge and observations. Information from Transtrum and Dunford was submitted as affidavits. The affidavits were received into evidence after the protestants stipulated to their admission. Transtrum and Dunford did not testify. Finally, Brockway testified about historical flows and patterns of delivery after talking to Leon Howell and other shareholders or officers of Fish Haven Water Users Company.

28. Dunford farmed and irrigated the Johnson property from 1982 through 1997. Transtrum farmed and irrigated the Johnson property from 1998 through 2003. Both affidavits contain verbatim statements about historical flows and patterns of diversion:

The number of water turns available throughout the summer varied depending on the amount of water available in Fish Haven Creek based on runoff conditions. In good years, the Company was able to keep all ditches full and there was ample water to supply irrigation needs. During poor years and particularly during the later summer months as the water dropped, the available water would be rotated

or alternated through the various ditches so shareholders would receive their proportionate share.

29. Leon Howell (Howell) is a lifelong resident of Fish Haven and is a user of water delivered by Fish Haven Water Users Company. Howell has been acquainted with water deliveries in Fish Haven Water Users Company for approximately 70 years. Howell currently serves as the secretary of the Fish Haven Water Users Company.

30. Howell testified that, historically, water was only available to deliver the full amount of water to all the ditches for the entire irrigation season approximately one year in every twenty years. He testified that, at the beginning of the irrigation season, Fish Haven Creek water is initially delivered to one ditch. When flows in Fish Haven Creek begin to rise, water is turned into two ditches, then three ditches, and so on, until all the ditches are receiving sufficient water.

31. Howell testified that, as flows in Fish Haven Creek decline, water is no longer delivered to all the ditches. Depending on available flow in Fish Haven Creek, diversion of water into one, two, three, or four ditches may be cut off. Water is rotated between the ditches when there is insufficient flow in Fish Haven Creek to fill all five ditches.

32. Howell expressed concern that there will not be sufficient water to mitigate for the water uses of the subdivision. Howell testified that, during some years, water was taken out of the upper ditches, and the upper north and upper south ditches received absolutely no water the entire year.

33. Howell testified that, when water is delivered to a ditch operated by the Fish Haven Water Users Company, the water users who receive water from the ditch each divert the entire flow of the ditch for three hours for every share they own that is designated to that ditch. When one of the water users finishes irrigating for the allotted time based on the number of shares he owns in the ditch, the next water user, in turn takes all the water in the ditch for his allotment.

34. Howell testified that during 2003, the water users were able to fully rotate the water four times. He testified that in 2002, the water users were only able to fully rotate the water three times.

35. Howell testified that, during the 2003 irrigation season, Fish Haven Water Users Company diverted water in all of its ditches for 17 days. Water was rotated between the ditches the remainder of the irrigation season.

36. Howell's testimony indicated that the season for irrigation begins as early as April 15th, and extends until approximately October 15th.

37. The affidavits of Dunford and Transtrum can probably be reconciled with the testimony of Howell. Nevertheless, the hearing officer finds that the affidavits reflect optimism

about the water supply not portrayed in Howell's testimony. To the extent there is any conflict between Howell's testimony and the statements of Dunford and Transtrum, the hearing officer finds Howell's testimony more persuasive because: (a) the statements of Dunford and Transtrum were verbatim, indicating that they did not individually write the language, (b) there is no evidence that Dunford and Transtrum have the intimacy and exposure to the delivery system that Howell has, (c) the statements by Dunford and Transtrum lacked the specificity of Howell's testimony, and (d) Dunford and Transtrum did not testify and were not subject to examination.

38. During good water years, water flows in Fish Haven Creek are sufficient to deliver water in all of the ditches simultaneously for most or all of the irrigation season. Howell estimated that a good water year occurs about once in every 20 years.

39. During typical water years, water is delivered simultaneously through all five ditches during the high spring runoff, and when the high flows diminish, water diverted from Fish Haven Creek is rotated between the five ditches, sometimes several at a time, and sometimes one at a time.

40. During some poor water years, flows in Fish Haven Creek may be so low that the Upper North Ditch and the Upper South Ditch do not receive any water and the other ditches may have a very limited water supply.

41. Howell testified that the organizers of the Fish Haven Water Users Company intended to issue one share of stock for each of 1,426 acres.

42. Leon Howell testified that assessments were paid in 2003 for the following shares of stock dedicated to the following ditches:

Upper North Ditch	249.5 shares
#3 North Ditch	255.42 shares
#1 North Ditch	133.75 shares
Upper South Ditch	325.84 shares
#2 South Ditch	318.51 shares
Total Assessed Shares	1,283.02 shares

43. Brockway prepared Applicant's Exhibit No. 13 to estimate the availability of water in Fish Haven Creek. Applicant's Exhibit No. 13 was revised in response to the order to augment the record. In computing the estimates, Brockway used information gleaned from discussions with officers of, or water users of water delivered by Fish Haven Water Users Company, or his own field reconnaissance observations. No numerical data was gathered or measured to compute values in Applicant's Exhibit No. 13.

44. In the amended Applicant's Exhibit No. 13, Brockway uses the value of three hours of water delivery to each shareholder and the number of assessed shares assigned to each ditch as a basis to compute total time for all the water users diverting water from one of the ditches to rotate through one cycle of deliveries on the ditch. Brockway used the number of Johnson's shares allocated to each ditch to compute the time Johnson would be entitled to receive water during a rotation cycle in each ditch. Finally, Brockway also conservatively used an irrigation season of 150 days, which is well within the irrigation season estimated by Howell.

45. Other assumptions are not clear, however. Brockway states "Rotation Schedule 31 days to rotate to all users." The information submitted to augment the record implies that the 31 days is an approximate rotation period if water is being diverted into all the ditches. This implication is also supported by the 31.19 days of rotation for the Upper North Ditch and the 31.93 days of rotation for the #3 Ditch. The exclusion of the south ditches also implies that Brockway's calculations assume all of the ditches are receiving water simultaneously.

46. The rotation period for one cycle in #1 North Ditch is 16.72 days, approximately half the time of the rotation cycles for the other northern ditches. If the assumption is that all of the ditches are receiving water, then the water users receiving water in the #1 North Ditch would receive approximately twice as much water over the irrigation season per share of stock as a water user owning shares in the Upper North Ditch and the #3 North Ditch. This disparity is reflected in Brockway's calculations of the time Johnson is entitled to water in the #1 North Ditch and the volume of water he is entitled to receive during an irrigation season.

47. Brockway's computations do not take into account Howell's testimony that: (a) the water is rotated between ditches in low water years, (b) in 2002, the water was rotated three times for all the users and four times in 2003, and (c) there are some years when there is no water delivered to the Upper North Ditch and Upper South Ditch.

48. Finally, Brockway assumes flow rates for each of the ditches to calculate possible total annual volumes of water. In the amended Applicant's Exhibit No. 13, he introduced a flow rate of 0.59 into each ditch to show that, even at a significantly reduced flow rate, there would be sufficient water volume for mitigation proposed by Sam's Hollow.

49. Brockway's estimates may be within reasonable ranges for a high water year or even a typical year. The hearing officer finds that the Applicant's Exhibit No. 13 does not reasonably estimate water availability for low water years because the estimates assume: (a) there is flow in all of the ditches all of the time, (b) some shares of stock are entitled to significantly more water over the course of the irrigation season than other shares of stock, (c) the number of rotations in his calculations exceed the number of rotations during the past two years, and (d) the testimony of Howell that water is sometimes not delivered at all to the Upper North Ditch.

50. Domestic water users are the least tolerant of all water users in accepting water shortages. As a result, water availability, both for the ground water supply and the surface water mitigation, should approach certainty. Estimates of water availability for mitigation should be

based on the minimum available water. Applicant's Exhibit No. 13 does not adequately estimate these minimum values. The hearing officer will not consider Applicant's Exhibit No. 13 in reaching a decision.

51. Nonetheless, the hearing officer finds that Johnson owns sufficient shares of stock in Fish Haven Water Users Company to deliver the quantity of water needed for mitigation in most years. This conclusion is based on the testimony of Howell and the affidavits of Dunford and Transtrum.

52. Sam's Hollow drilled two test wells within the proposed Phase I of the subdivision. Brockway tested both of these wells by conducting a step-interval pump test. By measuring drawdowns in the wells and corresponding drawdowns in a well near well number one, Brockway estimated the characteristics of the aquifer and the impacts on other wells.

53. Brockway testified that the nearest domestic well is 1,000 feet away, and according to computations using the Tyce equation, the drawdown impacts on this and other wells would be negligible.

54. Brockway testified that the aquifer in the area is similar to the aquifers south of the proposed development in the Bear Lake West Subdivision. Based on his analysis and experience with the Bear Lake West wells, Brockway testified that the aquifer at the location of the proposed wells would produce sufficient water to supply the quantities for the purposes sought by the applications.

55. Gerdis testified that he and his partner, Johnson, own the land upon which the development is proposed without debt or encumbrance, and that Johnson and he have sufficient cash to develop the property.

56. The Bear Lake Haven Subdivision has been presented to the Bear Lake County Planning and Zoning Commission for a conditional use permit under the Bear Lake County zoning ordinances. The planning and zoning commission has expressed favorable support for the subdivision. Acquisition of the water right is the final step for approval of the conditional use permit.

57. A portion of the subdivision is located within the Fish Haven Sewer District. The portion of the subdivision within the sewer district most closely borders U.S. Highway 89, approximately one-quarter mile west of the north-south highway. Homes within the sewer district will be served by the sewer district. The sewage from residences outside the sewer district will be discharged to septic systems. The lot sizes of homes outside the sewer district will all exceed three acres. The residential lots must be at least $\frac{1}{2}$ acre in surface area for septic tank approval, and then only if soil conditions are favorable.

58. Gerdis and Alex Hudson, an engineer hired to track the development, both testified that the subdivision and the additional homes would economically benefit Bear Lake County and the surrounding area.

59. Gerdis testified that Sam's Hollow would be controlled and operated by Johnson until it can be turned over to a homeowners association. After the corporation is turned over to the association, the association will be responsible for the monitoring and mitigation required by the offered mitigation plan.

60. Howell and Glen Rich both expressed concern about the ability of the homeowners association to properly measure, monitor, repair the measuring devices, record the measurements, and properly report them. They expressed concern that the homeowners association would not be willing to curtail water use to the domestic units during times of shortage, and that IDWR would not have the resources to administer in times of shortage.

61. Water District No.11, Bear River, was created to administer and regulate the waters of the Bear River. Fish Haven Creek is included in Water District No. 11 as a stream tributary to the Bear River.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. The applicant bears the burden of proof for the factors IDWR must consider in Idaho Code § 42-203A.

3. The drawdown analysis and evaluation of the aquifer by Charles Brockway established that the proposed appropriations of ground water would not injure other water rights authorizing the use of ground water in the Fish Haven area.

4. The evaluation of water availability in the aquifer by Charles Brockway established that there is sufficient ground water to supply the quantities of water sought by the applications.

5. Based on the testimony of Connie Gerdis, the applicant has sufficient financial resources to complete the project.

6. The applicant has expended significant resources in acquiring the property, surveying, preparing proposed development documents, and submitting the documents to the Bear Lake County authorities. The application is not filed for purposes of delay or in bad faith.

7. The effects on the public water resource of supplying ground water for domestic purposes related to recreational properties in Bear Lake County is consistent with the local public interest as defined by Idaho Code § 42-202B(3).

8. Sam's Hollow will employ methods of water application that will conserve the waters of the state of Idaho.

9. The Bear River Management Plan requires that an applicant mitigate the general Bear River hydrologic system for depletions to the surface water sources in the drainage.

10. The mitigation plan proposed by Sam's Hollow satisfies the general requirements of the management plan. Assumptions underpinning the plan are overly optimistic, however. The proposed mitigation plan assumes an adequate supply of surface water in Fish Haven Creek to supply the 120 acre feet to Bear Lake after full build-out. The testimony of Leon Howell and Stan Rich established that, during low water years, there might not be sufficient surface water to mitigate fully for depletions caused by the proposed ground water withdrawals.

11. Domestic users of water do not tolerate curtailment of their domestic uses of water. The domestic user's expectation of a continuous water supply increases the level of certainty when IDWR considers whether the water supply is sufficient for the purpose sought.

12. Lack of certainty of mitigation supply water is not a cause for rejection of the application, however, greater certainty can be established by conditions of approval.

13. Certainty can be provided by requiring early forecasting and forced curtailment based on the forecasts. Certainty can also be provided by preparation of a water management and operation plan for the development and the homeowner's association.

14. Idaho Code § 42-108 authorizes a change in nature of use of a water right. Section 42-108 states, in pertinent part:

Any person desiring to make such change of . . . nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the . . . nature of use . . . of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code.

15. Idaho Code § 42-222 describes the details of an application for transfer and the factors that must be considered by IDWR in reviewing a proposed transfer.

16. Idaho Code § 42-1764(1) states that “[t]he approval of a rental of water from the water supply bank may be a substitute for the transfer proceeding requirements of section 42-222, Idaho Code.

17. Idaho Code § 42-607 states, in pertinent part:

It shall be the duty of said watermaster to distribute the waters of the public stream, streams or water supply, comprising a water district, among the several ditches taking water therefrom according to the prior rights of each respectively, in whole or in part, and to shut and fasten, or cause to be shut or fastened, under the direction of the department of water resources, the headgates of the ditches or other facilities for diversion of water from such stream, streams or water supply, when in times of scarcity of water it is necessary so to do in order to supply the prior rights of others in such stream or water supply; provided, that any person or corporation claiming the right to the use of the waters of the stream or water supply comprising a water district, but not owning or having the use of an adjudicated or decreed right therein, or right therein evidenced by permit or license issued by the department of water resources, shall, for the purposes of distribution during the scarcity of water, be held to have a right subsequent to any adjudicated, decreed, permit, or licensed right in such stream or water supply, ...

18. If the claim to water right no. 11-4022 were regulated by the watermaster of the Bear River, all permitted, licensed, and decreed water rights bearing priority dates later than the priority date asserted by claim no. 11-4022 would be delivered before any water would be delivered for claim no. 11-4022. In times of shortage and regulation of water rights in the Bear River Basin, water right no. 11-4022 could be curtailed.

ORDER

IT IS HEREBY ORDERED that applications to appropriate water nos. 11-7481 and 11-7491 are **APPROVED** subject to the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before **May 1, 2009**.
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. Prior to diversion of water under this right and prior to construction of any additional wells a water management and operation plan for Sam's Hollow and any successor must be submitted in writing and approved in writing by IDWR. The water management and operation plan shall contain the following components: (a) a description of a method for forecasting flows in Fish Haven Creek using measured Fish Haven Creek data or data from a comparable basin; (b) a fixed date each year, no later than April 1, when the volume of water to be diverted under this right during the upcoming year is declared and the forecasted streamflows will be compared to projected water use within the subdivision and; (c) a description of curtailment or other water conservation measures that will be employed in times of mitigation water shortages, and how water users will be notified prior to May 1 about restricted water use in the year of predicted shortage; (d) a description of how the curtailment and conservation measures will be monitored and enforced; (e) a description of the entire flow path of mitigation water, including ditches, pipes, culverts, control structures, and how the system will operate, beginning at the diversion from the Upper North Ditch, the #1 North Ditch, and the #3 North Ditch, and ending at the discharge to Bear Lake; (f) a specific description and the location of each measuring device and how each measuring device will be installed and maintained; (g) a description of the frequency of measuring, comparing, and reporting; (h) a list of those to whom the reports will be submitted; (i) the identity of the specific officer, by title, in the association or corporate organization, that will be responsible for the oversight of system operation; and (j) an alternate plan for mitigation water or curtailment should statutory claim no. 11-4022 ever be curtailed by the water master of the Bear River. In addition, the water management and operation plan shall also contain an operations manual for the benefit of employees working for Sam's Hollow that describes duties relative to operation, monitoring, and reporting.
5. The water management and operation plan must incorporate the components of the Settlement Agreement with PacifiCorp, dated October 7, 2003, related to water delivery, measurement, reporting, and retirement of irrigated acreage as the Bear Lake Haven Subdivision develops.

6. The provisions of the water management and operation plan will be incorporated as conditions of the permit to appropriate water. Failure of the permit holder to adhere to the provisions of the operation plan, including having an active and available officer of the association assigned to oversee the water management and operations plan, is cause for IDWR to issue a notice of violation and/or cease and desist order to the permit holder, and to cancel the permit to appropriate water. The provisions of the water management and operation plan may be amended without amending the water right permit under Idaho Code § 42-211, but all changes must be approved in writing by IDWR.

7. The use of water diverted by Fish Haven Water Users Company under water right no. 11-4022 for mitigation purposes must be represented by (a) an approved transfer recognizing the change in nature of use from irrigation to mitigation, or (b) an approved lease of a portion of water right no. 11-4022 to the Idaho Water Supply Bank for mitigation purposes. Diversion and use for mitigation without written approval by IDWR will be an illegal diversion of water.

8. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 11.

9. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

10. The irrigation occurring under this domestic use shall not exceed ½ acre within each platted subdivision lot upon which a home has been constructed. This right does not provide for irrigation of common areas or for irrigation of lots upon which homes have not been constructed.

11. Domestic use is for 63 homes, 256 condominium units, and 4 commercial units under water right no. 11-7481, and 241 homes under water right no. 11-7491.

Dated this 23rd day of April, 2004.



Gary Spackman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2004, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following::

Randall Budge
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, ID 83204-1391

Leon Howell
Box 117
Fish Haven, ID 83287

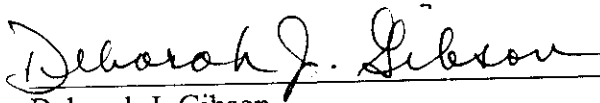
Idaho Department of Water Resources
Eastern Region
900 N Skyline Dr., Ste A
Idaho Falls, ID 83402-1718

Jody L Williams
HOLME ROBERTS & OWEN LLP
200 S Main St., Ste 1800
Salt Lake City, UT 84111-2263

Claudia Conder
Water Rights Administrator
PacifiCorp
1407 W. No. Temple Ste 110
Salt Lake City, UT 84140

Glenn Rich
St. Charles Irrigation Company
5473 US 89
St. Charles, ID 83272

Charles E. Brockway, PhD, P.E.
Brockway Engineering PLLC
2016 N Washington St., Ste 4
Twin Falls, ID 83301


Deborah J. Gibson

Ident. No. 11-7491

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Sam's Hollow Water Company Phone 208 232 6101
Post Office address 201 E. Center Street, Pocatello, ID 83201
2. Source of water supply Ground Water which is a tributary of _____
3. Location of point of diversion is _____ 1/4 of SW 1/4 of NE 1/4, Govt. Lot _____
Sec. 10 Township 16S Range 43E B.M. Bear Lake County; additional
points of diversion, if any: NW 1/4 NW 1/4 Sec 11, NW 1/4 SW 1/4 Sec 2
4. Water will be used for the following purposes:
Amount 1.22 for Domestic purposes from 1-1 to 12-31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity being appropriated is (a) 1.22 and/or (b) _____
cubic feet per second acre-feet per annum
6. Proposed diverting works:
 - a. Description of ditches, flumes, pumps, headgates, etc. _____
Three wells and central pipeline distribution system and storage tanks
 - b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
 - c. Proposed well diameter is 8 inches; proposed depth of well is 400 feet
 - d. Is groundwater with a temperature of greater than 85 degrees being sought? No
 - e. If well is already drilled, when? _____; Drilling firm _____;
Well was drilled for (well owner) _____
7. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year)
8. Description of proposed uses (if irrigation only, go to item 9):
 - a. Hydropower; show total feet of head and proposed capacity in KW. _____
 - b. Stockwatering; list number and kind of livestock. _____
 - c. Municipal; show name of municipality. _____
 - d. Domestic; show number of households Phase II development, 241 single family homes;
 - e. Other; describe fully. _____

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
16S	43E	2									D	D	D	D		D			
		10	D	D	D	D													
		11		D	D		D	D											

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. None

11. a. Who owns the property at the point of diversion? Applicant

b. Who owns the land to be irrigated or place of use? Johnson Dev. Co

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: The owners of lots within the subdivisions will be members of Sam's Hollow Water Company

12.. Remarks: Sam's Hollow Water Company will serve all lots within the service area with a common central water system with three wells. Sam's Hollow Water Company will also operate a common central water system in Phase I of this project but under a different water right. See attached Narrative

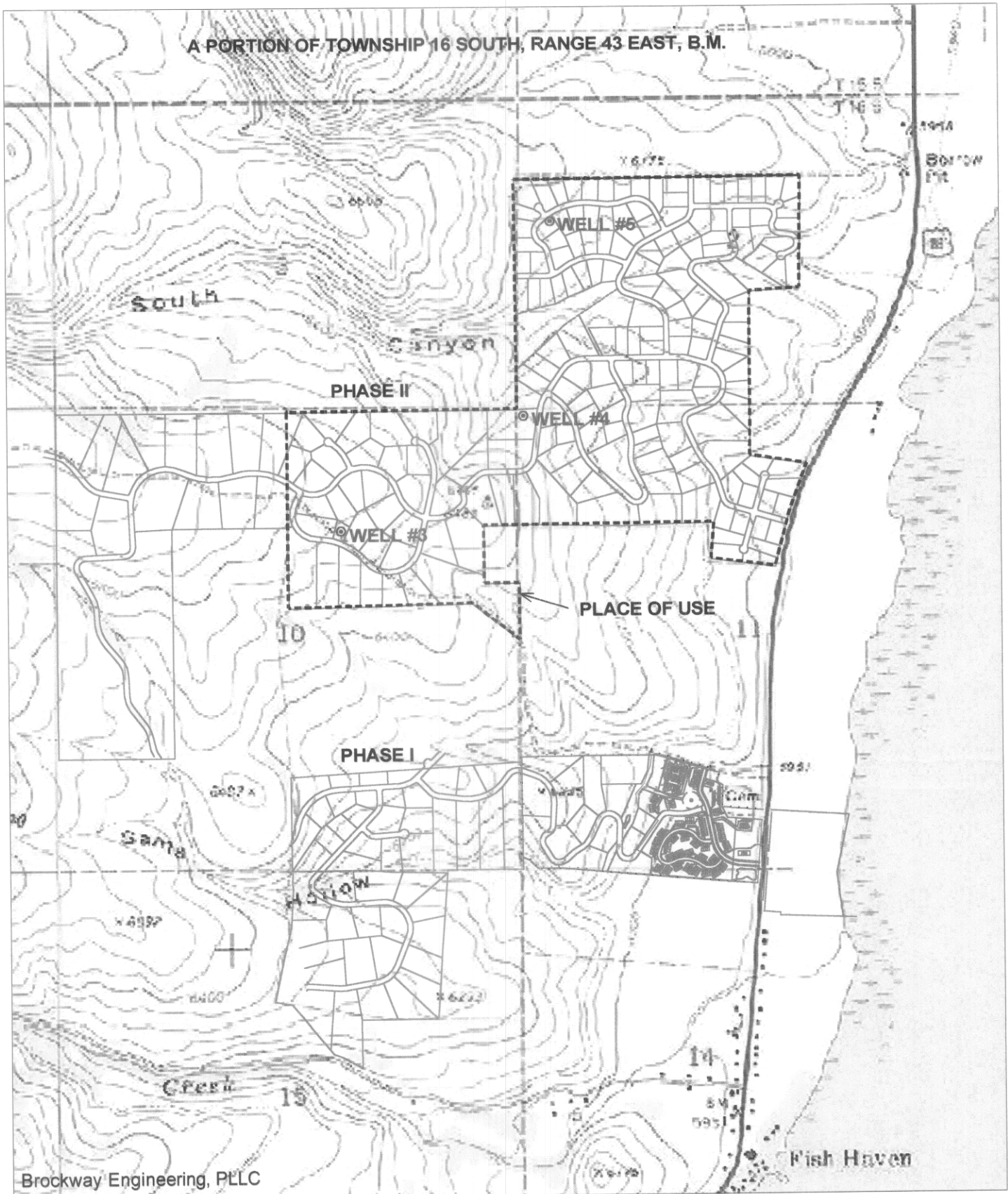
13. MAP OF PROPOSED PROJECT ATTACHED _____ show clearly the proposed point of diversion, place of use, section number, township and range number.

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Randall C. Budge, Attorney and Agent
(Applicant) For Applicant.

Received by HWT Date 1-11-02 Time _____ Preliminary check by _____
Fee \$ 270.00 Received by HWT # E027374 Date 1-11-02
Publication prepared by SC Date 5/7 & 5/14/03 Published in News Examiner
Publication approved SC Date 6/4/03

SAM'S HOLLOW WATER COMPANY BEAR LAKE HAVEN PHASE II



Narrative in Support of Application for Permit
Sam' Hollow Water Company
Bear Lake Haven Phase II

Bear Lake County

January 3, 2002

Sam's Hollow Water Company was organized in 2001 to own and operate a central water system and manage water and water rights for Members of the Corporation. The Company is currently organized to supply domestic and irrigation water from two wells in Sections 11 and 15, T16S, R43E B.M. for Phase I of the Bear Lake Haven Project near Fish Haven in Bear Lake County, Idaho. The Company service area will be expanded to serve additional homes in Phase II of the Project located in Sections 2, 10 and 11, T16S, R43E. Sam's Hollow Water Company is an Idaho Nonprofit Corporation.

The Company currently is scheduled to serve domestic and irrigation water for 63 single family homes, condominiums, and commercial areas in Phase I of the project. The common water system for Phase II of the project will serve 241 single-family residences as shown on the accompanying map. Fifteen (15) lots in Phase II will be served by individual wells. The wells on the fifteen lots will be developed by individual lot owners under Sec 42-111a of the Idaho Code and will therefore be exempt from permit requirements. *we have lots of water rights in the area?*

Two wells, No. 1 and 2, were drilled and tested in the Phase I area in 2000 and 2001 by Johnson Development Co. These were drilled as test wells to determine the yield of the local aquifer and pumping rates of 160 gpm and 580 gpm were obtained. Three additional wells are proposed for Phase II of the project as shown on the attached map. Geologic evidence indicates that the aquifer underlying the Phase 2 lands is similar to that underlying the Phase I land where the two test wells were drilled. It is expected therefore that additional wells necessary for Phase II of the project can be obtained. All water rights pertinent to the water system will be owned by Sam's Hollow Water Company.

Application for Permit No. 11-7481 was submitted by Sam's Hollow Water Company in October 2001 to IDWR for a water right for Phase I of the project. This application included a mitigation plan whereby consumptive depletions to Bear Lake would be mitigated by utilization of surface water rights from Fish Haven Creek, which are applicable to lands of members of the Company. This application for ground water to supply 241 homes in Phase II of the project contemplates similar use of Fish Haven Creek irrigation rights for mitigation.

Member's of Sam's' Hollow Water Company own shares in the Fish Haven Irrigation Company which provides water from Fish Haven Creek for irrigation of lands within the project. It is recognized that groundwater in the aquifer underlying the project is tributary to Bear Lake as is Fish Haven Creek. Additional consumptive use of water from the aquifer by pumping for the project can result in reductions of inflow to Bear Lake.

These are new irrigate 63.5 acre - 40 1/2 acre 1 lake or creek
This is now as I.C. now allow 120.5 acre to be irrigated in phase 2

For Phase II of the Bear Lake Haven Project, it is estimated that the total annual diversion from ground water for project use will equal 197.0 acre feet and that the total annual consumptive use from irrigation of 27.7 acres and domestic in-house use will equal 85.8 acre feet. To mitigate for additional consumptive use of ground water by the project, it is proposed to divert the Sam's Hollow Water Company shares of Fish Haven Irrigation Company but return sufficient volume of the diverted water directly to Bear Lake to mitigate for additional consumptive use on the project. Historically, water for project lands has been diverted through three ditches operated by the Fish Haven Water Users, namely the Upper North Ditch, and Ditches #1 and #3. Sufficient water thus diverted to project lands will be returned by pipeline and/or ditches to Bear Lake and will not be used for irrigation. It is therefor proposed to return 85.8 acre feet of water diverted from Fish Haven Creek during the irrigation season directly to Bear Lake to mitigate for any increased consumptive use by the project.

A water measurement and monitoring program will be maintained to assure that sufficient irrigation water diverted under Company owned shares in the Fish Haven Irrigation Company does, in fact, reach Bear Lake through pipelines and ditches constructed as part of the project.

Negotiations with the Board of Fish Haven Irrigation Company to allow use of diverted shares for return to Bear Lake to mitigate for increased project consumptive use have been held and they are in agreement with the proposal

Shares of Fish Haven Ditch Company, which are owned by members of Sam's Hollow Water Company, include 140.5 shares currently owned by Howard Johnson and 47 shares owned by Elton and Alton Kearl. There are 146.5 shares in the Upper North Ditch (99.5 by Howard Johnson, 47 by Eldon and Alton Kearl), 20 shares in the Number 1 Ditch, and 21 shares in the Number 3 ditch. Based on rotation data supplied by Leon Howell and Harry Michaelson of the Fish Haven Ditch Co., water from these three ditches would be available to the project on a rotation basis with the Upper North Ditch on 12.4 days out of a 31-day rotation period. Number 1 ditch would be on 2.5 days out of a 12.65-day rotation, and Number 3 ditch would be on 2.6 days out of a 31.65-day rotation. For a 150 day irrigation season, these three ditches would be on about 60.2, 29.6, and 12.4 days respectively or a total of 102.3 days total when one or more ditches would be delivering water to project lands. To mitigate for the Phase II project consumptive use of 85.8 acre feet, an average flow of 0.42 cfs or 21.2 miners inches for the 102.3 days would have to be returned directly to Bear Lake.

Mitigation of the 85.8 af of consumptive use would require that 36.2 acres of historically irrigated land be dried up. This would consist of any irrigated areas within the project upon which structures or roads would be built and other irrigated land taken out of production. The mitigation plan for Phase I of the project required mitigation for 56.4 af/year or an average flow of 0.28 cfs or 14 miners inches for the 102.3 days for which irrigation water is normally available to the Project. The combined Phase I and Phase II mitigation for consumptive use is therefore 85.8 + 56.4 or 142.2 af/year. An average flow of 0.70 cfs or 35.0 miners inches for the 102.3 days will be required to be returned to Bear Lake.

Is not the 56.4 not available?

Documentation of the amount of water available to the project through any of the three ditches will require water measurement and accounting of water deliveries throughout the season. Sam's Hollow Water Company will assist in installing additional water measurement and monitoring equipment on ditches diverting from Fish Haven Creek, and will install a water measuring and flow totalizing device on the return pipe or ditch to Bear Lake to assure that the required mitigation water does return to the lake. Diversions to project lands under the project's shares will continue as determined by the Board of Fish Haven Water Users and a water accounting and reporting program will be implemented by Sam's Hollow Water Company to account for all water mitigation water diverted directly to Bear Lake.

To estimate the affect of the additional wells in the aquifer on water levels and local well interference, observation wells were measured during the pumping tests of wells #1 and #2. A calculation of the drawdown effects of pumping an 8-inch diameter well at estimated maximum-pumping levels was performed.

During the pumping test of well #1 in November 2000, the well was pumped at a maximum rate of 138 gpm with a measured drawdown of approximately 88 feet. Two observation wells were measured during the eight-hour test. Observation well #1 was located in Fish Haven near the condominium complex south of the highway approximately 3382 feet south west of the pumped well. Depth to water was 4' 7" prior to the pumping test and did not change during the eight hours of pumping well #1. Observation well #2 was an unused 8 inch diameter well with a hand pump located 1065.7 feet north east of the pumped well near the intersection of the cemetery road and the highway. Depth to water before the pumping test was 15' 28 1/2". The water level in the well did not change during the pumping test of well #1.

Utilizing the drawdown and discharge data from the pumped wells, a computer program based on the Theis equation was used to estimate drawdown at various distances from a pumped well. The attached spreadsheet and chart show the estimated drawdown at distances up to 1000 feet from an 8-inch diameter well pumping continuously at 300 gpm. The design maximum discharge for Phase II is 1.22 cfs (547 gpm) pumping from two or three wells.

The attached spreadsheet shows that the drawdown from a well pumping 300 gpm continuously for 50 days would be 1.84 feet at a distance of 1000 feet from the well. This estimate is conservative since the production wells will not pump continuously but will cycle on and off depending on the demand. A more likely scenario is that an individual well would pump one half the average daily domestic demand plus the irrigation demand of 200 gpm for 24 to 48 hours. In which case, the drawdown caused by the pumped well would be imperceptible at 500 feet from the well.

The aquifer yield for both Phase I and Phase II is more than adequate to supply the domestic and irrigation demands of the project and local well interference will not be significant. Planned locations for wells in Phase II and Phase I are more than 1000 feet from any domestic or municipal wells.

Well Interference Analysis Bear Lak Haven Wells

Estimated Well Drawdown

Wellint.xls

C.E. BROCKWAY Jan 4, 2002 Brockway Engineering P.L.L.C.

AQUIFER PROPERTIES BASED ON INITIAL PUMP TEST-Well No 1

EST. HOLE DIA. 8 INCHES

USING THEIS FORMULA $S=114.6*Q/T*W(U)$

S= DRAWDOWN IN FT

Q= PUMPING RATE GPM

T= COEFFICIENT OF TRANSMISSIBILITY GPD/FT

$W(U)$ = WELL FUNCTION OF 'U'

$$W(U) = -.5772 - \text{LOGe}U + U - U^2/(2*2!) + U^3/(3*3!) - U^4/(4*4!) \dots$$
$$U = 1.87 \cdot r^2 \cdot S / (T \cdot t)$$

r=DISTANCE IN FT. FROM CENTER OF PUMPED WELL TO DRAWDOWN POINT

S=COEFFICIENT OF STORAGE

T=COEFFICIENT OF TRANSMISSIBILITY, GPD/FT

t= TIME SINCE PUMPING STARTED, DAYS

INPUT

$r_1 = 0.333 \text{ FT}$ $K = 2.00 \text{ FT/DAY}$ <<<<<<<<

r2= 40 FT K= 2.3148E-05 CFS/FT^2

r3= 500 FT K= 1.49E+01 GPD/FT^2

r4= 1000 FT WRIGHT SAT. DEPTH EST.= 350 FT

r5= 5280 FT TRANSMISSIVITY= 5222 GPD/FT

S= 0.12 TRANSMISSIVITY= 8.08E-03 FT^2/SEC

T= 5222 GPD/FT TRANSMISSIVITY= 698.1 FT^2/DAY

Q/WELL 300.00 GPM = 0.668 CFS

TIME	TIME	U	WELL	DRAW	SPEC.	U	WELL	DRAW	U	WELL	DRAW	U	WELL	DRAW
HOURS	t	w/r1	FUNCT.	DOWN	CAP	W/r2	FUNCT.	DOWN @	W/r3	FUNCT.	DOWN	W/r4	FUNCT.	DOWN @
	DAYS	0.33333333	W(U)1	@WELL	GPM/FT	40	W(U)2	40	500	W(U)3	500	1000	W(U)4	1000
1	0.04	1.146E-04	8.4970	55.94	5	1.650E+00	0.0802	0.53	2.578E+02	0.0000	0.00	1.031E+03	0.0000	0.00
2	0.08	5.730E-05	9.1901	60.50	5	8.251E-01	0.2969	1.95	1.289E+02	0.0000	0.00	5.157E+02	0.0000	0.00
8	0.33	1.432E-05	10.5764	69.63	4	2.063E-01	1.1975	7.88	3.223E+01	0.0000	0.00	1.289E+02	0.0000	0.00
32	1.33	3.581E-06	11.9627	78.76	4	5.157E-02	2.4386	16.05	8.057E+00	0.0000	0.00	3.223E+01	0.0000	0.00
128	5.33	8.953E-07	13.3490	87.89	3	1.289E-02	3.7868	24.93	2.014E+00	0.0480	0.32	8.057E+00	0.0000	0.00
512	21.33	2.238E-07	14.7353	97.01	3	3.223E-03	5.1635	33.99	5.036E-01	0.5555	3.66	2.014E+00	0.0480	0.32
1200	50.00	9.549E-08	15.5870	102.62	3	1.375E-03	6.0134	39.59	2.149E-01	1.1644	7.67	8.594E-01	0.2793	1.84

HOURS	DAYS	@WELL	40	500	1000	DISTANCE FEET
-------	------	-------	----	-----	------	---------------

Weeks	DATE	0.00	0.00	0.00	0.00
1	0.04	-55.94	-0.53	0.00	0.00

2	0.08	-60.50	-1.95	0.00	0.00
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8	0.33	-69.63	-7.88	0.00	0.00
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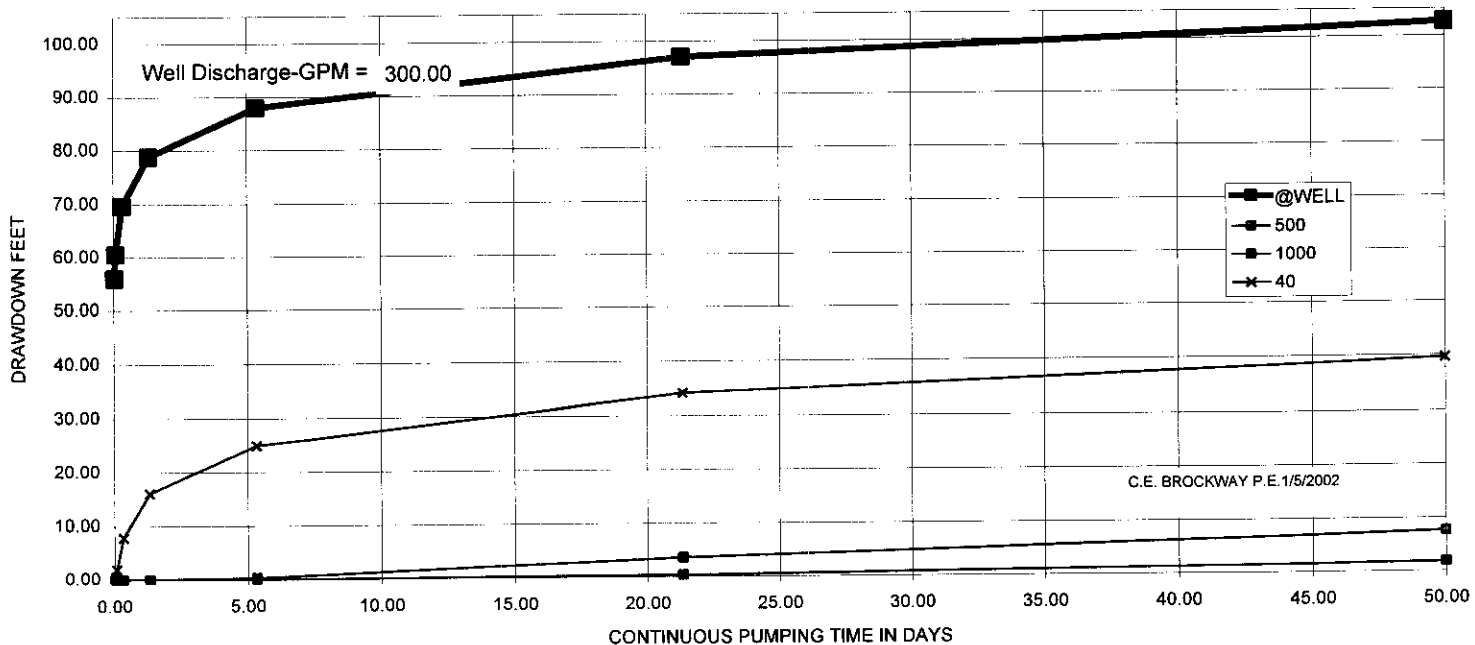
32	1.33	-78.76	-16.05	0.00	0.00
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128	5.33	-87.89	-24.93	-0.32	0.00
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512	21.33	-97.01	-33.99	-3.66	-0.32
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1200	50.00	-102.62	-39.59	-7.67	-1.84
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ESTIMATED DRAWDOWN FROM AN 8 IN. DIA WELL-BEAR LAKE HAVEN



Hydraulic and Nutrient Loadings and Limits

J. R. Simplot Company - Aberdeen Plant land application - Pratt site

3-Jan-02
Brockway Engineering, PLLC

YEAR-ROUND SITE UTILIZATION

Total available site acres (approximate) 1440 acres
Weighted average soil WHC in 60" 11 inches
Total soil storage volume 430.1 MG
Irrigation application efficiency 0.85

Crop uptake (lb/ac):
NVDS 1500
TKN 360
Total P 31
Total K 300

Growing Season

Process water daily flow 1.1 MGD
Operating days in GS, 4/1-10/31 193 days
Process water flow 212.3 MG
Average crop ET - alfalfa 37.48 inches
Precipitation - assume minimal 1.0 inches

Irrigation water requirement 36.45 inches
Amount supplied by process water 5.43 inches
Required supplemental water 31.02 inches = 1212.8 MG

Parameter	Process C (mg/l)	Supplemental C (mg/l)	Total load (lbs)	Per-acre Limit*	Units	Acres Required
COD	3000	0	5311746	50	Average lb/ac/day	550
NVDS	1000	367	5482574	2250	Total lb/ac/year	2437
				4000		1371
TKN	150	1.2	277725	540	Total lb/ac/year	514
Total P	27	0.03	48109	46.5	Total lb/ac/year	1035
Total K	300	3.9	570621	450	Total lb/ac/year	1268

* Annual

Non-Growing Season

Process water daily flow 1.1 MGD
Operating days in NGS, 11/1 - 3/31 137 days
Process water flow 150.7 MG
ET 3.00 inches
Precipitation 3.57 inches

Process water applied 3.85 inches
Limit - 50% of soil storage 5.50 inches

Parameter	Process C (mg/l)	Supplemental C (mg/l)	Total load (lbs)	Per-acre Limit*	Units	Acres Required
COD	3000	n/a	3770514	50	Average lb/ac/day	391
NVDS	1000	n/a	1256838	2250	Total lb/ac	559
TKN	150	n/a	188526	540	Total lb/ac	349
Total P	27	n/a	33935	47	Total lb/ac	730
Total K	300	n/a	377051	450	Total lb/ac	838

* NGS only

Narrative in Support of Application for Permit
Sam' Hollow Water Company
Bear Lake Haven Phase II

Bear Lake County

Revised April 29, 2002

Sam's Hollow Water Company was organized in 2001 to own and operate a central water system and manage water and water rights for Members of the Corporation. The Company is currently organized to supply domestic and irrigation water from two wells in Sections 11 and 15, T16S, R43E B.M. for Phase I of the Bear Lake Haven Project near Fish Haven in Bear Lake County, Idaho. The Company service area will be expanded to serve additional homes in Phase II of the Project located in Sections 2, 10 and 11, T16S, R43E. Sam's Hollow Water Company is an Idaho Nonprofit Corporation.

The Company currently is scheduled to serve domestic and irrigation water for 36 single family homes, 256 condominiums, and 10,000 sq ft of commercial area in Phase 1 of the project. The common water system for Phase II of the project will serve 241 single-family residences as shown on the accompanying map. Fifteen (15) lots in Phase II will be served by individual wells. The wells on the fifteen lots will be developed by individual lot owners under Sec 42-111a of the Idaho Code and will therefore be exempt from permit requirements.

Two wells, No. 1 and 2, were drilled and tested in the Phase I area in 2000 and 2001 by Johnson Development Co. These were drilled as test wells to determine the yield of the local aquifer and pumping rates of 160 gpm and 580 gpm were obtained. Three additional wells are proposed for Phase II of the project as shown on the attached map. Geologic evidence indicates that the aquifer underlying the Phase 2 lands is similar to that underlying the Phase I land where the two test wells were drilled. It is expected therefore that additional wells necessary for Phase II of the project can be obtained. All water rights pertinent to the water system will be owned by Sam's Hollow Water Company.

Application for Permit No. 11-7481 was submitted by Sam's Hollow Water Company in October 2001 to IDWR for a water right for Phase I of the project. This application included a mitigation plan whereby consumptive depletions to Bear Lake would be mitigated by utilization of surface water rights from Fish Haven Creek, which are applicable to lands of members of the Company. This application for ground water to supply 241 homes in Phase II of the project contemplates similar use of Fish Haven Creek irrigation rights for mitigation.

Member's of Sam's' Hollow Water Company own shares in the Fish Haven Irrigation Company which provides water from Fish Haven Creek for irrigation of lands within the project. It is recognized that groundwater in the aquifer underlying the project is tributary to Bear Lake as is Fish Haven Creek. Additional consumptive use of water from the aquifer by pumping for the project can result in reductions of inflow to Bear Lake.

For Phase II of the Bear Lake Haven Project, it is estimated that the total annual diversion from ground water for project use will equal 197.0 acre feet and that the total annual depletion from irrigation of 27.9 acres of irrigation associated with houses and facilities and domestic in-house use will equal 41.1 acre feet. An estimate of additional depletion of the water resource was made using procedures developed by Dr. Robert Hill. This procedure estimates depletions from home sites and condominiums, commercial development, and irrigation around facilities and accounts for depletions from in-house use, on-site wastewater treatment facilities, and irrigation consumptive use. The total depletion from planned facilities in Phase 2 of the project utilizing the Hill estimating procedure will equal 41.1 acre feet per year.

To mitigate for additional consumptive use of ground water by the project, it is proposed to divert the Sam's Hollow Water Company shares of Fish Haven Irrigation Company but return sufficient volume of the diverted water directly to Bear Lake to mitigate for additional consumptive use on the project. Historically, water for project lands has been diverted through three ditches operated by the Fish Haven Water Users, namely the Upper North Ditch, and Ditches #1 and #3. Sufficient water thus diverted to project lands will be returned by pipeline and/or ditches to Bear Lake and will not be used for irrigation. It is therefor proposed to return 41.1 acre feet of water diverted from Fish Haven Creek during the irrigation season directly to Bear Lake to mitigate for any increased depletion by the project.

A water measurement and monitoring program will be maintained to assure that sufficient irrigation water diverted under Company owned shares in the Fish Haven Irrigation Company does, in fact, reach Bear Lake through pipelines and ditches constructed as part of the project. A pipeline with in-line totalizing flow meter will be installed at the lower end of the project to measure the flow being returned directly to Bear Lake. Reports of volumes of water returned to Bear Lake will be supplied to IDWR and any other interested parties.

Negotiations with the Board of Fish Haven Irrigation Company to allow use of diverted shares for return to Bear Lake to mitigate for increased project consumptive use have been held and they are in agreement with the proposal

Shares of Fish Haven Ditch Company, which are owned by members of Sam's Hollow Water Company, include 140.5 shares currently owned by Howard Johnson. There are 99.5 shares in the Upper North Ditch, 20 shares in the Number 1 Ditch, and 21 shares in the Number 3 ditch. Based on rotation data supplied by Leon Howell and Harry Michaelson of the Fish Haven Ditch Co., water from these three ditches would be available to the project on a rotation basis with the Upper North Ditch on 12.4 days out of a 31-day rotation period. Number 1 ditch would be on 2.5 days out of a 12.65-day rotation, and Number 3 ditch would be on 2.6 days out of a 31.65-day rotation. For a 150 day irrigation season, these three ditches would be on about 60.2, 29.6, and 12.4 days respectively or a total of 102.3 days total when one or more ditches would be delivering water to project lands. To mitigate for the Phase II project consumptive use of 41.1 acre feet, an average flow of 0.20 cfs or 10 miners inches for the 102.3 days would have to be returned directly to Bear Lake.

Using procedures developed by Robert Hill, mitigation of the 41.1 af of depletion would require that 34.7 acres of historically irrigated land be dried up. This would consist of any irrigated areas within the project upon which structures or roads would be built and other irrigated land taken out of production. The mitigation plan for Phase I of the project required mitigation for 21.7 af/year or an average flow of .13 cfs or 6.5 miners inches for the 102.3 days for which irrigation water is normally available to the Project. The combined Phase I and Phase II mitigation for depletion is therefore 41.1 +21.7 or 62.8 af/year. An average flow of 0.33 cfs or 16.5 miners inches for the 102.3 days will be required to be returned to Bear Lake.

Documentation of the amount of water available to the project through any of the three ditches will require water measurement and accounting of water deliveries throughout the season. Sam's Hollow Water Company will assist in installing additional water measurement and monitoring equipment on ditches diverting from Fish Haven Creek, and will install a water measuring and flow totalizing device on the return pipe or ditch to Bear Lake to assure that the required mitigation water does return to the lake. Diversions to project lands under the project's shares will continue as determined by the Board of Fish Haven Water Users and a water accounting and reporting program will be implemented by Sam's Hollow Water Company to account for all water mitigation water diverted directly to Bear Lake.

To estimate the affect of the additional wells in the aquifer on water levels and local well interference, observation wells were measured during the pumping tests of wells #1 and #2. A calculation of the drawdown effects of pumping an 8-inch diameter well at estimated maximum-pumping levels was performed.

During the pumping test of well #1 in November 2000, the well was pumped at a maximum rate of 138 gpm with a measured drawdown of approximately 88 feet. Two observation wells were measured during the eight-hour test. Observation well #1 was located in Fish Haven near the condominium complex south of the highway approximately 3382 feet south west of the pumped well. Depth to water was 4' 7" prior to the pumping test and did not change during the eight hours of pumping well #1. Observation well #2 was an unused 8 inch diameter well with a hand pump located 1065.7 feet north east of the pumped well near the intersection of the cemetery road and the highway. Depth to water before the pumping test was 15' 28 1/2". The water level in the well did not change during the pumping test of well #1.

Utilizing the drawdown and discharge data from the pumped wells, a computer program based on the Theis equation was used to estimate drawdown at various distances from a pumped well. This analysis showed the estimated drawdown at distances up to 1000 feet from an 8-inch diameter well pumping continuously at 300 gpm. The design maximum discharge for Phase II is 1.22 cfs (547 gpm) pumping from two or three wells.

The drawdown from a well pumping 300 gpm continuously for 50 days would be 1.84 feet at a distance of 1000 feet from the well. This estimate is conservative since the production wells will not pump continuously but will cycle on and off depending on the demand. A more likely scenario is that an individual well would pump one half the average daily domestic demand plus the irrigation demand of 200 gpm for 24 to 48 hours.

In which case, the drawdown caused by the pumped well would be imperceptible at 500 feet from the well.

The aquifer yield for both Phase I and Phase II is more than adequate to supply the domestic and irrigation demands of the project and local well interference will not be significant. Planned locations for wells in Phase II and Phase I are more than 1000 feet from any domestic or municipal wells.

Now

Starting

Right Side

of file.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 30, 2004

CHARLES E BROCKWAY
2016 N WASHINGTON ST STE 4
TWIN FALLS, ID 83301

Re: Management Plan for Mitigation for Sam's Hollow Water Company, water right
nos. 11-7481 and 11-7491

Dear Dr. Brockway:

I have reviewed the Water Management and Operations Plan for Mitigation you prepared for Sam's Hollow Water Company. Preparation of a management and operations plan was required by condition four of the order approving water right permit nos. 11-7481 and 11-7491. Many of the required components are included in the plan. I have identified the following deficiencies, however:

Frequency of Measurement and Comparison

Condition 4(g) requires a "description of the frequency of measuring, comparing, and reporting . . ." The plan states that currently Sam's Hollow Water Company is measuring the flows in the ditches diverting water from Sam's Hollow Creek "twice a week." It also states "these measurements will continue to be obtained by the Fish Haven Water Users Association (I believe this should be 'company' instead of 'association') or by Sam's Hollow Water Company." If the phrase "these measurements" means measurement "twice a week" then the plan should specifically state the frequency of measurement in the future.

If the Fish Haven Water Users Company is delivering the full entitlement to the five ditches operated by the Fish Haven Water Users Company, measurement twice a week may not be necessary. If water delivered to the ditches is reduced or rotated between ditches, more frequent measurement may be necessary. At a minimum, water flow should be measured at the time it is turned into a ditch and at times when diversion to the ditches changes. Finally, any time water is turned out of a ditch, the date and time should be recorded. The management and operations plan should require measurement when water is delivered into a ditch, should specify the frequency of ditch diversion measurement, and should require recording of the date and time when water is no longer being delivered to the ditch.

The management and operations plan does not discuss the frequency of comparison of the amount of water discharged to Bear Lake for mitigation and the water being pumped from

ground water. The plan should require periodic comparisons, perhaps monthly, of the volumes pumped and the corresponding mitigation releases to Bear Lake to determine whether sufficient mitigation water is being released during the irrigation season. Mitigation accounting should not be left for sudden reconciliation at the end of the irrigation season, or worse, the end of the year when the report is being written.

Report Submittal

Condition 4(h) states that the annual report will "be available to members of Sam's Hollow Water Company, Fish Haven Water Users Association and the Idaho Department of Water Resources." At a minimum, the report should be submitted to IDWR and placed in the water right file for public access to the information in the report. IDWR should not have to request the report.

Corporate Officer to Oversee Water Operation

Condition 4(i) requires identification of a "specific officer, by title, in the association or corporate organization, that will be responsible for oversight of system operation." The plan does not identify the officer or specific member of the board of directors who will be responsible. The designation should name a position, such as the corporate secretary, rather than a specific individual who may not serve as an officer in the future. A hired water manager is not a corporate or association officer but is an employee of the corporation or association. Without the designation of a corporate officer, Sam's Hollow will be in immediate violation of condition 6 which states that failure to designate the officer is cause for IDWR to issue a notice of violation and/or cease and desist order to the permit holder, and to cancel the permit.

Regulation by the Watermaster

Condition 4(j) requires the submittal of "an alternate plan for mitigation water or curtailment should statutory claim no. 11-4022 ever be curtailed by the watermaster of the Bear River." The operations plan states the following:

In the event the water available to Fish Haven Water Users under statutory claim #11-4022 is modified, the appropriate changes in the mitigation plan will be determined and incorporated. Ample time will be available to secure additional water for mitigation either from additional shares in the Fish Haven system or other transfers since full build out may take 20 years.

If there is not ample time to secure additional water supplies, the plan should specify that use of ground water will be limited to in-house use only.

Operations Manual

Condition 4 requires that the water management and operation plan shall contain an operations manual for the benefit of employees working for Sam's Hollow that describes duties relative to operation, monitoring, and reporting." The operations manual was not submitted with the management and operation plan.

Miscellaneous

Finally, Appendix E should be removed from the management and operation plan. The document was submitted as a response to an inquiry by the hearing officer. After its submittal, the hearing officer determined some of the information contained therein was faulty. Other portions of the submittal now conflict with what is written in the management and operations plan. Inserting incorrect or conflicting information in the plan as an appendix will complicate and confuse future implementation of the plan. If the text is deemed important, it ought to be incorporated in the narrative of the plan.

Summary

When the additions/amendments suggested above are incorporated into the management and operations plan, I will write another letter approving the plan.

Respectfully,

A handwritten signature in cursive script, appearing to read "Gary Spackman".

Gary Spackman

Cc: IDWR - Eastern Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 7, 2004

SAMS HOLLOW WATER CO
201 E CENTER ST
POCATELLO ID 83201

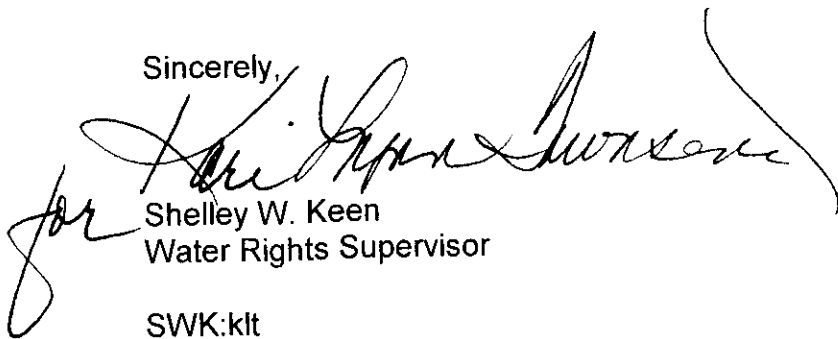
RE: Permit Nos. 11-7841 and 11-7491

Dear Permit Holder:

Enclosed please find Permit Nos. 11-7841 and 11-7491 issued in connection with the Amended Preliminary Order of May 24, 2004, which has become final.

If you have any questions regarding this matter, please call me at 208-327-7946.

Sincerely,



Shelley W. Keen
Water Rights Supervisor

SWK:klt

Enclosure

cc: RANDALL C BUDGE
BEAR LAKE WATCH INC



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 24, 2004

Randall C. Budge
Racine Olson Nye & Budge Chtd.
201 East Center, Suite A2
P. O. Box 1391
Pocatello, ID 83204-1391

Re: Water Right Permits Nos. 11-7481 and 11-7491 in the Name of Sam's Hollow Water Company

Dear Randy:

This letter is sent to follow up on a meeting held on August 4, 2004, involving myself, staff of the Idaho Department of Water Resources ("Department" or "IDWR"), as well as representatives of Sam's Hollow Water Company ("Sam's Hollow"), and your subsequent telephone conversation with the Department's attorney, Phillip Rassier. The subject of the meeting and your subsequent conversation with Mr. Rassier focused on alternative methods available to satisfy the requirements of Condition No. 7 of the Department's Preliminary Order dated April 23, 2004, which is now a final order. Condition No. 7 of the order provides:

7. The use of water diverted by Fish Haven Water Users Company under water right no. 11-4022 for mitigation purposes must be represented by (a) an approved transfer recognizing the change in nature of use from irrigation to mitigation, or (b) an approved lease of a portion of water right no. 11-4022 to the Idaho Water Supply Bank for mitigation purposes. Diversion and use for mitigation without written approval by IDWR will be an illegal diversion of water.

The first issue on which Sam's Hollow seeks guidance is whether the change in nature of use from irrigation to mitigation contemplated under Condition No. 7 may occur through a single transfer proceeding, or whether the change must occur seriatim as water use is gradually converted from irrigation to mitigation over the 20 to 40 years it may take for total build-out of the Bear Lake Haven Subdivision. The Department agrees that the proposed transfer proceeding recognizing the change in nature of use of water from irrigation to mitigation may occur through a single transfer proceeding which would add mitigation as an additional authorized purpose of use to the existing irrigation rights that are being made available to mitigate the effects of diverting water under newly approved permits nos. 11-7481 and 11-7491. However, the Department will require annual reporting of the extent of use for irrigation and mitigation under the portion of water right no. 11-4022 transferred to ensure there is no enlargement in use.

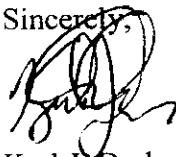
Randall C. Budge
August 24, 2004
Page 2 of 2

The second issue on which Sam's Hollow seeks guidance relates to the Agreement dated March 14, 2002, that Sam's Hollow entered into with Fish Haven Water Users Company ("Fish Haven") and C. Howard Johnson. Fish Haven is the legal titleholder of water right no. 11-4022, which is used to provide water for irrigation purposes to its shareholders. The issue raised is whether the Department views the Agreement dated March 14, 2002, as providing the necessary consent of Fish Haven for Sam's Hollow to file a transfer application pursuant to Idaho Code §§ 42-108 and 42-222 to add mitigation as an authorized purpose of use for that portion of the Fish Haven water right proposed to be used for mitigation purposes.

Upon review of the Agreement dated March 14, 2002, and consultation with the Department's legal counsel, I have concluded that the Agreement does contain the necessary consent of Fish Haven authorizing Sam's Hollow to file a transfer application to add mitigation as an approved purpose of use to that portion of water right no. 11-4022 which is to be used for mitigation purposes. This conclusion is based upon paragraphs 1, 2.b., and 5.b. of the Agreement under which Fish Haven consents to the use by Sam's Hollow of the subject water shares to meet its mitigation requirements as may be imposed by the Department for the subdivision project. The Agreement also authorizes Sam's Hollow to obtain at its sole expense "all necessary permits, approvals and authorizations necessary to use the water in the manner contemplated herein and for the Project generally."

Let me know if you need something more.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl J. Dreher", written over a horizontal line.

Karl J. Dreher
Director



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 25, 2004

Re: In the matter of Applications to Appropriate Water Nos. 11-7481 and 11-7491 in
the name of Sam's Hollow Water Company

Dear Interested Parties:

The Department of Water Resources (department) has issued the enclosed **Amended Preliminary Order** pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.**

Please note that water right owners are required to report any change of water right ownership and/or change of mailing address to the department within 120 days of the change. Contact any office of the department or visit our homepage on the Internet to obtain the proper reporting form.

If you have any questions, please call me at (208) 327-7953.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures

c: IDWR - Regional Office

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, request for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION)
TO APPROPRIATE WATER NOS.)
11-07481 AND 11-07491 IN THE NAME)
OF SAM'S HOLLOW WATER)
COMPANY)**

**ORDER FOR AUGMENTATION
OF THE RECORD**

On October 8, 2003, a hearing was conducted by the Idaho Department of Water Resources (IDWR) for the contested case created by protests filed against the above applications to appropriate water.

On December 22, 2003, the hearing officer wrote a letter to Randy Budge, attorney for Sam's Hollow Water Company ("Sam's Hollow" or "applicant") requesting that the record for the contested case be augmented with additional information about the sufficiency of water supply for mitigation and about how the water will be administered. The letter suggested several alternatives for gathering and submittal of additional information to IDWR.

On January 20, 2004, IDWR received a letter from Randy Budge agreeing to "reopen and supplement the record for the limited purpose of providing additional information substantiating the available flow in Fish Haven Creek that will be utilized for mitigation purposes." The letter also stated the applicant would "respond to the questions raised . . . based upon the existing record and the supplemental information."

Based on the response from Sam's Hollow to the hearing officer's inquiry, the following is an order requiring the submittal of additional information by Sam's Hollow.

ORDER

IT IS HEREBY ORDERED that, on or before March 1, 2004, additional information may be submitted to the hearing officer by the parties related to the following:

Sufficiency of Water Supply for Mitigation

Further information or data related to Applicant's Exhibit no. 13, which was intended to establish the availability of surface water that could be contributed from water rights owned by Sam's Hollow for mitigation. Specifically, the information should describe:

1. The schedule of rotation on Sam's Hollow Creek.
2. Whether water is diverted to ditches simultaneously or separately during rotation.

3. The basis for assumptions for computations in Applicant's Exhibit no. 13.
4. Whether shares of the Fish Haven Creek Water Users Company are assigned to each ditch, and, if so, the number of shares per ditch.
5. The basis for the assumption or computation establishing a time-delivery entitlement of three hours per share.
6. Additional data of measured flows in Sam's Hollow Creek.
7. The validity of water right no. 11-4022.
8. The total number of acres irrigated under the Sam's Hollow water right and verification of irrigation of the acreage;

Administration of the Mitigation Water

Additional information may be submitted relative to how the mitigation water will be administered. Specifically, the information should describe:

9. The ditch or ditches from which mitigation water will be delivered through the Sam's Hollow delivery system.
10. The pipelines or conveyance works that will deliver mitigation water to Bear Lake.
11. Details of how the deliveries from Fish Haven Creek, from ground water, and of surface water to Bear Lake for mitigation will be measured, compared, coordinated, and regulated.
12. Type of measuring devices that will be employed at each measurement location.
14. Who will be responsible for maintaining and reading the measuring devices.
15. The time interval for the measurements.
16. Who will determine annually the depletion based on dynamic development and require the appropriate release of surface water to Bear Lake for mitigation.
17. Who will be responsible for reporting and recording the measurements and water deliveries.
18. Proposals for measures of accountability/penalty that will insure continued performance of these responsibilities through myriad ownership changes and absentee home ownership.
19. If curtailment of ground water deliveries is necessary because of inadequate surface water availability, whether the shortage of surface water can be sufficiently forecasted to

curtail ground water rights at the same time, or whether the ground water use will be curtailed some time after the surface water shortage is identified.

IT IS FURTHER ORDERED that, on or before March 15, 2004, the parties may submit any rebuttal information to the initial augmentation;

IT IS FURTHER ORDERED that on or before March 29, 2004, the parties may submit a request for an augmentation hearing, or any other requests for appropriate relief.

IT IS FURTHER ORDERED that the letter written by Leon Howell to IDWR, dated October 17, 2003, and the attached documents, are received into the record as part of this augmentation order.

IT IS FURTHER ORDERED that copies of all the documents submitted to IDWR must be served on all the parties, including PacifiCorp. and proof of service submitted to IDWR.

Dated this 4th day of February, 2004.

A handwritten signature in cursive script, reading "Gary Spackman", written over a horizontal line.

Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of February, 2004, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

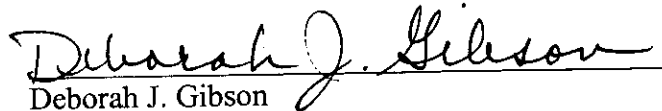
Randall Budge
RACINE OLSON NYE BUDGE &
BAILEY
P.O. Box 1391
Pocatello, ID 83204-1391

Leon Howell
Box 117
Fish Haven, ID 83287

Jody L Williams
HOLME ROBERTS & OWEN LLP
200 S Main St., Ste 1800
Salt Lake City, UT 84111-2263

Glenn Rich
St. Charles Irrigation Company
5473 US 89
St Charles, ID 83272

Idaho Department of Water Resources
Eastern Region
900 N Skyline Dr., Ste A
Idaho Falls, ID 83402-1718


Deborah J. Gibson



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 5, 2004

Dexter R. Pitman
Southeastern Regional Supervisor
Idaho Department of Fish & Game
1345 Barton Road
Pocatello, ID 83204-1819

Re: Application to Appropriate Water nos. 11-7481 and 11-7491 in the Name of Sam's
Hollow Water Company

Dear Mr. Pitman:

On January 14, 2004, you sent me a letter expressing concern about a use of water proposed by Sam's Hollow Water Company. The applications propose diversion of ground water for beneficial use in a proposed subdivision located west of the town of Fish Haven. The applications also propose delivery of a portion of the surface water diverted by Fish Creek Water Users Company from Fish Creek under statutory claim no. 11-4022 for irrigation to Bear Lake to mitigate for the depletions to the Bear Lake and Bear River caused by the proposed ground water diversion. Your letter probably relates to whether the mitigation surface water should be delivered in the channel of Fish Creek instead of through a pipe or some other artificial channel.

Notice of applications to appropriate water nos. 11-7481 and 11-7491 was published and protestants filed protests against the applications. The U.S. Fish & Wildlife Service protested one of the applications. A hearing was scheduled for October 8, 2004. On the day of the hearing, the U.S. Fish & Wildlife Service withdrew its protest. The hearing was conducted and the record was closed.

I have recently signed an order to supplement the record with information about the availability of the surface water for mitigation and about how the water diverted from ground water and the surface water delivered for mitigation will be administered. The subject of whether mitigation water should remain in Fish Haven Creek is not a subject about which I am seeking additional information for the record.

While IDWR has a responsibility to consider fisheries values in determining whether a proposal should be approved or denied, I will not consider the information you submitted for three reasons. First, there must be an orderly end to the submittal of evidence to IDWR in a contested case. The Fish and Game comments were not submitted until approximately four months after the contested case hearing. Second, the water being offered for mitigation is an

Mr. Pitman
Idaho Fish & Game
February 5, 2004
Page 2

existing surface water right for irrigation, and the water has been diverted from the stream for years. Third, your letter was not served on any of the parties to the contested case.

I am returning your letter to you. It will not be considered by IDWR in its decision. I am sending copies of the letter to the parties, however, for their reference. Perhaps direct discussions with the applicant could resolve some of your concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Spackman".

Gary Spackman

Cc: Randall Budge, RACINE OLSON NYE BUDGE & BAILEY
Leon Howell
Jody L Williams, HOLME ROBERTS & OWEN LLP
Glenn Rich, St. Charles Irrigation Company
Idaho Department of Water Resources - Eastern Region



IDAHO FISH & GAME

SOUTHEAST REGION
1345 Barton Road
Pocatello, Idaho 83204-1819

RECEIVED

JAN 20 2004

Department of Water Resources

Dirk Kempthorne/Governor
Steven Huffaker/Director

January 14, 2004

Gary Spackman
Idaho Department of Water Resources
1301 North Orchard St.
Boise, Idaho 83706

RE: Sam's Hollow Development, Application for Water Rights
Nos. 11-7481 & 11-7491

Dear Gary:

The Southeast Region, Idaho Department of Fish and Game (IDFG) is highly concerned about ramifications to a significant Idaho fisheries resource. The result of placing Fish Haven Creek in a pipe upstream of the creek's confluence with Bear Lake jeopardizes the re-establishment of a native fish run. Fish require water for their existence. In this case Fish Haven Creek serves as a migration corridor for Bonneville cutthroat trout spawning adults and juveniles. In years of sustained instream flow the creek produces juveniles to Bear Lake as part of the lake to stream to lake life cycle of this native trout species; without water, the cycle cannot function.

Idaho Fish and Game Authority

Idaho Department of Fish and Game (IDFG), acting under the supervision of the Idaho Fish and Game Commission is charged with carrying out the statutory policy to preserve, protect, perpetuate, and manage all fish and wildlife and will advocate fish and wildlife receive equal treatment with all other resources in land and water management decisions. Idaho Code § 36-103(a). To this end the IDFG's Fisheries Management Plan (FMP) 2001-2006 (IDFG 2001) sets forth general policies as well as specific directives for fish management.

Protection and restoration of the state's native fish resources is a priority for Idaho State agencies relative to providing for those resources to adequately secure future (the Endangered Species Act). Activities, which depart from those priorities, are not in the best interest of the state and is counter to IDFG's direct responsibilities. Converting Fish Haven Creek to a pipeline is inconsistent with our responsibilities and goals to restore Bear Lake cutthroat successfully in this stream.

Bear Lake Cutthroat Trout Management

Idaho of Fish and Game (IDFG), acting under the supervision of the Idaho Fish and Game Commission is charged with carrying out the statutory policy to preserve, protect, perpetuate, and manage all fish and wildlife and will advocate fish and wildlife receive equal treatment with all other resources in land and water management decisions. Idaho Code § 36-103(a). To this end the IDFG's Fisheries Management Plan (FMP) 2001-2006 (IDFG 2001) sets forth general policies as well as specific directives for fish management. Specific to native fish species the FMP directs that;

“...all cutthroat trout must be seriously considered in fisheries and land management decisions in their remaining habitat. The IDFG will also emphasize cutthroat trout when reviewing timber sales, mining practices, grazing management, point and nonpoint source pollution, and antidegradation guidelines.” and;

“The IDFG will strive to insure that adequate flows remain in Idaho streams to protect aquatic and riparian resources and provide for fish and wildlife oriented recreation.” (ibid)

Bear Lake cutthroat trout are a component of one of three native cutthroat trout species in Idaho. Bonneville cutthroat trout inhabit the Bonneville Basin of Idaho, Utah and Nevada. The Bear Lake component utilizes the lake and its few tributary streams for a complete life cycle. Three small tributary streams provide the natural production for the Bear Lake system. Irrigation demand for available flow is absolute at various times and at different locations along the streams. This poses serious problems for trout production and survival. This is not a unique situation within the state.

Attempts to Reestablishment Fish Haven Creek as a Spawning Tributary

Reestablishment of the native spawning run of the Bear Lake Cutthroat trout into Fish Haven Creek has been an item of great interest to IDFG, other agencies and individuals dating back to 1986. This water could be an important addition to spawning and rearing habitat for Bear Lake BCT. Presently all water is used for irrigation seasonally, especially during low water years. Also, the lower 100 meters of this creek have been put in a cement flume, thus upstream passage for pre-spawners is questionable. The manmade steep concrete flume has severely restricted the migration of the cutthroat from Bear Lake into Fish Haven Creek for many years. The flume produces water velocities that are too high and depths that are too shallow for the spawners to swim upstream. In addition, a six-foot high boulder strewn cascade presently exists near the mouth of Fish Haven Creek.

(Fisheries Management Plan 1996-2000. Idaho of Fish and Game, Boise, ID):

“Fish Haven Creek should be a significant spawning tributary to Bear Lake, but most of, and frequently all, the water is diverted for irrigation through much of the summer.” IDFG “will continue to seek ways improve habitat and fish passage conditions, increase natural spawning success, decrease flows reduction in the channel and minimize fish losses to irrigation canals.

We hope in the near future to find innovative means to return Fish Haven Creek to a fully functional Bear Lake cutthroat trout spawning tributary. IDFG "will strive to improve habitat and fish passage conditions in Fish Haven Creek and seek " ways to increase natural spawning success, decrease irrigation quantity and minimize losses into irrigation canals."

Following are excerpts from a 1993 letter from IDFG to Whit Fosberg, National Fish and Wildlife Foundation, expressing our commit to restoring Fish Haven Creek.:

"By this letter, we are documenting our planned contribution of labor and materials described in alternative two of the attached memo from Phil Jeppson of our {IDFG, added by author} Engineering Bureau. The anticipated expense for the project is \$22,000. We would like to be partners with the USDA Forest Service and DOI Bureau of Land Management on this project. This project would be part of the National Fish and Wildlife Foundation's "Bring back the natives" project No. 92-143.

We are enthusiastic about the opportunity to be part of this excellent cooperative initiative with the Fish and Wildlife Foundation, the Bureau of Land Management, and the USDA Forest Service. Thank you for providing the catalyst that allowed this project to be undertaken."

IDFG has a recent agreement with the Fish Haven Irrigation Company that their water users will consider the needs of the trout in their water use management. At times the Company completely dewateres Fish Haven Creek. The Company President, Glen Rich, said that in most years there would be a continuous stream of water in Fish Haven Creek to its mouth, at least during the spring spawning migration season through the middle of June and again in the fall. These are the critical times for migration of cutthroat trout to and from the spawning and rearing area of upper Fish Haven Creek and the adult rearing area of Bear Lake.

Idaho Native Trout Species of Concern

The Bear Lake cutthroat trout are identified as an adfluvial (lake oriented life history) form of the Bonneville cutthroat trout. Water management, dam construction, adversely affects these fish introductions of other fish species, grazing practices, and irrigation dewatering in tributaries. The Bonneville cutthroat trout was petitioned for federal listing in 1998, the federal listing agency decision was to not list the species, at this time at least partly considering commitments of the State of Idaho to improve conditions limiting the trout's success and protect those areas where the fish reside.

Local Commitment to Habitat Restoration

Habitat restoration, primarily in the form of regulating water development and improving hydrologic function, is currently a priority for Bear Lake managers. Regulation of local water via minimum instream flows agreements, diversion screening, and restrictions on new development have helped in restoring hydrologic function in tributaries as well. Grazing

restrictions, riparian enclosures, and sometimes-complete removal of livestock have been implemented in an effort to minimize stream habitat degradation. Working with private landowners to manage irrigation diversions, maintain minimum flows in tributaries and improve grazing has lead to restoration of spawning habitat in St. Charles and Big Spring Creeks. Additionally, an agreement with PacifiCorp and other downstream water users for minimum lake level requirements should minimize drawdown problems and increase connectivity between the lake and tributary streams (B. Nielson, pers. comm., Lentsch et al. 1997).

IDFG has reiterated these concerns in several responses to proposed activities affecting Fish Haven Creek examples being, the Paradise Beach Condominium boat launch (June 14, 2000) and Fish Haven Pipe Line Co, culinary water line (No. 11-S-132).

A local group, the St. Charles – Fish Haven Irrigation and Fisheries Improvement Working Group a group of irrigators from both St. Charles and Fish Haven Creeks, a county commissioner, state legislator, Idaho IDFG of Fish and Game, US Forest Service, U.S. Fish and Wildlife Service and the U.S. Natural Resources Conservation Service has been meeting regularly for about one year. The group submitted a successful grant application to the Idaho Office of Species Conservation in May 2003. The \$30,000 grant paid for Dr. Bob Hill of Utah State University to analyze current irrigation practices and describe alternate irrigation methods for increased efficiency in water use.

The information from this study will be become part of the database for the working group to use when deciding how to improve conditions for both irrigation and fisheries in these two watersheds. Because of limited water resources and because water rights often exceed flow, there are substantial difficulties in achieving the watershed group's objectives

IDFG Recommendation to the IDWR

The proposal to put the exchanged surface water into a pipe and pipe it to Bear Lake will eliminate all avenues for improving the tenuous Bear Lake tributary stream situation for Bonneville cutthroat trout. This outcome is not in the best interest of the State of Idaho, local residents of Bear Lake County or others concerned about the status and future of these fish in the Bear Lake system. IDFG proposes that the Fish Haven Irrigation Company, Sam's Hollow Developers, IDWR, and IDFG propose an agreement or legislation that would allow Sam's Hollow's exchanged surface water to remain in Fish Haven Creek all the way to Bear Lake. This will achieve the outcome of the PacifiCorp's goal of delivering water to the lake in a manner that also looks out for the native trout of Bear Lake and precludes the likelihood of federal intervention in management of fish species of concern in the Bear River/Bear Lake drainage.

This agreement will require collaborative and creative problem solving by our two state agencies, the state leadership necessary for successful resolution.

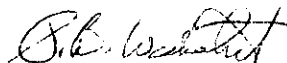
Summary

IDFG wishes to express grave reservation concerning the proposal to put the exchanged surface water into a pipe and pipe it to Bear Lake. IDFG proposes that the Fish Haven Irrigation Company, Sam's Hollow Developers, IDWR, and IDFG propose an agreement or legislation that would allow Sam's Hollow's exchanged surface water to remain in Fish Haven Creek all the way to Bear Lake. Idaho IDFG of Fish and Game strongly opposes the piped water option. Exchanging surface for ground water and leaving the surface water in the stream (rather than in a pipe) presents a rare opportunity to restore perennial flow in Fish Haven Creek. Future

developments will likely make the same surface to ground water exchange requests. If a precedent can be set that will allow exchanged surface water to remain in the stream, native fisheries will benefit. This is not only good for the resource, but good for the public that enjoys fishery resources.

IDFG would like assistance the IDWR to find a way that the exchanged water can remain in Fish Haven Creek all the way to Bear Lake. Although this situation differs somewhat from that on the Lemhi River where rented water was allowed to pass from the original points of diversion on down to the mouth of the Lemhi River, perhaps similar creativity could be used to keep exchanged surface water in Fish Haven Creek.

Please contact Jim Mende or Richard Scully @ the Southeast Region, 232-4703, if we can provide further information..


for Dexter R. Pitman

Regional Supervisor

DX/JM/jm

Cc: A. Harrison, Bear Lake Regional Commission
G. Hogander, BLM
NRPB
File

Email: B. Phillips, IDFDG
T. Lucia, IDFDG



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

February 5, 2004

KARL J. DREHER
Director

Philip L. Damon
Pocatello Field Office Manager
US Department of the Interior
Bureau of Land Management
4350 Cliffs Dr
Pocatello ID 83204-2105

Re: Application to Appropriate Water nos. 11-7481 and 11-7491 in the Name of Sam's
Hollow Water Company
Your reference no. 7250

Dear Mr. Damon:

On January 27, 2004, you sent me a letter expressing concern about a use of water proposed by Sam's Hollow Water Company. The applications propose diversion of ground water for beneficial use in a proposed subdivision located west of the town of Fish Haven. The applications also propose delivery of a portion of the surface water diverted by Fish Creek Water Users Company from Fish Creek under statutory claim no. 11-4022 for irrigation to Bear Lake to mitigate for the depletions to the Bear Lake and Bear River caused by the proposed ground water diversion. Your letter probably relates to whether the mitigation surface water should be delivered in the channel of Fish Creek instead of through a pipe or some other artificial channel.

Notice of applications to appropriate water nos. 11-7481 and 11-7491 was published and protestants filed protests against the applications. The U.S. Fish & Wildlife Service protested one of the applications. A hearing was scheduled for October 8, 2004. On the day of the hearing, the U.S. Fish & Wildlife Service withdrew its protest. The hearing was conducted and the record was closed.

I have recently signed an order to supplement the record with information about the availability of the surface water for mitigation and about how the water diverted from ground water and the surface water delivered for mitigation will be administered. The subject of whether mitigation water should remain in Fish Haven Creek is not a subject about which I am seeking additional information for the record.

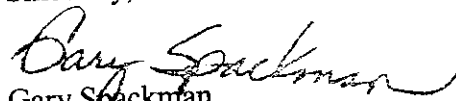
While IDWR has a responsibility to consider fisheries values in determining whether a proposal should be approved or denied, I will not consider the information you submitted for three reasons. First, there must be an orderly end to the submittal of evidence to IDWR in a contested case. The Fish and Game comments were not submitted until approximately four

Mr. Damon
US Dept. of Interior - BLM
February 5, 2004
Page 2

months after the contested case hearing. Second, the water being offered for mitigation is an existing surface water right for irrigation, and the water has been diverted from the stream for years. Third, your letter was not served on any of the parties to the contested case.

I am returning your letter to you. It will not be considered by IDWR in its decision. I am sending copies of the letter to the parties, however, for their reference. Perhaps direct discussions with the applicant could resolve some of your concerns.

Sincerely,


Gary Spackman

Cc: Randall Budge, RACINE OLSON NYE BUDGE & BAILEY
Leon Howell
Jody L. Williams, HOLME ROBERTS & OWEN LLP
Glenn Rich, St. Charles Irrigation Company
Idaho Department of Water Resources - Eastern Region



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Pocatello Field Office
4350 Cliffs Drive
Pocatello, Idaho 83204-2105
(208) 478-6340
<http://www.id.blm.gov/offices/pocatello>



RECEIVED
JAN 30 2004
Department of Water Resources

In Reply Refer To:
7250

January 27, 2004

Gary Spackman
Idaho Department of Water Resources
1301 Orchard Street
Boise, Idaho 83706

Re: Sam's Hollow Development, Application for Water Rights Nos 11-7481 and 11-7491

Dear Mr. Spackman:

The Bureau of Land Management (BLM) would like to voice concern over the proposal by the Sam's Hollow Development to place the flow of Fish Haven Creek in a pipe.

The BLM has been cooperating with Idaho Fish and Game to maintain and improve the Bonneville cutthroat spawning habitat on public land in Fish Haven Creek. We are also participating in the four state interagency group implementing the Bonneville cutthroat trout conservation strategy to avoid listing the Bonneville cutthroat trout under the Endangered Species Act. We feel the attempts by some groups to list the Bonneville cutthroat as an endangered species emphasize the need to manage all possible habitat for this fish in the best way possible.

It seems to us that permanently removing the spawning connection to Bear Lake is counter productive to this effort.

We encourage the parties involved to come to a creative solution to this dilemma. For instance, is there a possibility that, in addition to exchanging surface water for ground water, the Sam's Hollow Development could purchase irrigation rights downstream and retire those acres from irrigation to make up for the amount of water that the proposed pipe would carry? Then there wouldn't be an issue about a given amount of water needing to reach the lake.

Sincerely,

Philip L. Damon
Field Office Manager

cc: Richard Scully, Idaho Fish and Game
1345 Barton Road
Pocatello, ID 83204

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
TO APPROPRIATE WATER NOS.)	
11-07481 AND 11-07491 IN THE NAME)	ORDER DENYING MOTION
OF SAM'S HOLLOW WATER)	TO COMPEL DISCOVERY
COMPANY)	AND PREHEARING ORDER
_____)	

The Idaho Department of Water Resources scheduled a hearing to be conducted on October 8 & 9, 2003 for the contested case created by protests filed against the above listed applications.

On September 15, 2003, the hearing officer received a copy of interrogatories served on the protestants by the applicant.

On September 18, 2003, the applicant filed a motion to compel discovery with IDWR. IDWR accepted the document as a Motion for an Order Authorizing Discovery under Rule 521 of the IDWR's Rules of Procedure.

IDWR's Rules of Procedure allow 14 days for a nonmoving party to answer a motion. An answer from the nonmoving parties is due on or before October 2, 2003, less than one week before the hearing is scheduled to begin.

As a result, the hearing officer informed Randy Budge of the 14 day period for filing an answer, and told Mr. Budge it was unlikely IDWR would issue an order granting discovery with less than a week before the beginning of the hearing. The hearing officer encouraged Mr. Budge to contact the parties directly and promote an informal exchange of information prior to the hearing. Mr. Budge has not recontacted IDWR regarding discussions with the parties.

Because of the short time remaining before the hearing, it is inappropriate for IDWR to issue a general order authorizing discovery or an order that will only allow one party to begin discovery. Nonetheless, IDWR often requires that the parties disclose before the hearing much of the

information sought by the applicant's discovery requests. As a result, IDWR issues the following order related to the motion for an order authorizing discovery and hearing preparation.

ORDER

IT IS HEREBY ORDERED that the Motion for an Order Authorizing Discovery (titled Motion for an Order Compelling Discovery) is **DENIED**.

IT IS FURTHER ORDERED that in order to prepare for the upcoming hearing, **each party shall provide the following information to the other parties, and the hearing officer:**

1. A general statement of the reason for the protest.
2. A list of witnesses the party intends to call at the hearing. Please specifically identify any person who will testify as an expert witness.
3. Copies of exhibits that will be offered at the hearing. If the exhibit is difficult to copy or fax, a general description of the exhibit will suffice.

This information **must be received by the parties and the hearing officer on or before October 6, 2003**, and can be provided by facsimile or direct delivery. The parties shall make a good faith effort to provide the information listed above. Because of the short deadlines, comprehensive and complete submittal may not be possible. Failure to submit all information will result in limitations or sanctions at the hearing unless the hearing officer finds that a party did not make a good faith effort to submit the information. The hearing officer should be served at 1301 N. Orchard St., Boise, ID 83706; Fax No. (208)327-7866.

Dated this 26th day of September 2003.



Gary Spackman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of September, 2003, the above and foregoing document was served on the following by faxing a copy of the same to the following facsimile phone numbers:

Randall Budge
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, ID 83204-1391
Fax: (208) 232-6109

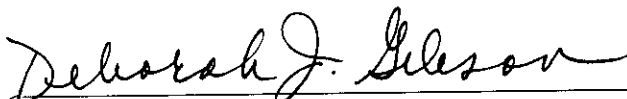
CLYDE SNOW SESSIONS & SWENSON
Attn: Bear River Water Users' Association
201 S Main St.
Salt Lake City, UT 84111-2216
Fax: (801) 521-6280

Leon Howell
C/O Kathy Izatt
Fax: (801) 532-7750

Jody L Williams
HOLME ROBERTS & OWEN LLP
200 S Main St., Ste 1800
Salt Lake City, UT 84111-2263
Fax: (801) 521-9638 ?

I HEREBY CERTIFY that on this 26th day of September, 2003, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Glenn Rich
St. Charles Irrigation Company
5473 US 89
St Charles, ID 83272


Deborah J. Gibson

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of September, 2003, the above and foregoing document was served on the following by faxing a copy of the same to the following facsimile phone numbers:

Randall Budge
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, ID 83204-1391
Fax: (208) 232-6109

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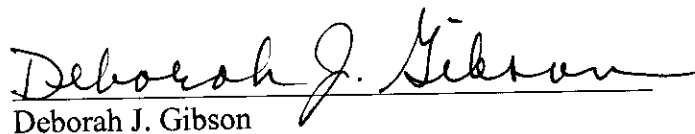
Leon Howell
C/O Kathy Izatt
Fax: (801) 532-7750

I HEREBY CERTIFY that on this 29th day of September, 2003, the above and foregoing document was served on the following by faxing a copy of the same to the following facsimile phone numbers:

Jody L Williams
HOLME ROBERTS & OWEN LLP
200 S Main St., Ste 1800
Salt Lake City, UT 84111-2263
Fax: (801) 521-9639

I HEREBY CERTIFY that on this 26th day of September, 2003, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Glenn Rich
St. Charles Irrigation Company
5473 US 89
St Charles, ID 83272


Deborah J. Gibson

Attn: Del via ~~Allen~~ Gibson

HP OfficeJet G Series G95
Personal Printer/Fax/Copier/Scanner

Fax-History Report for
IDWR

Sep 29 2003 8:24am

Last Fax

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Sep 29	8:22am	Sent	9-18015219639----162	1:13	4	OK

IDAHO DEPARTMENT OF WATER RESOURCES

Fax

To:	Parties listed in the Certificate of Service	From:	Deborah J. Gibson (208) 327-7953
Fax:	See Certificate of Service	Date:	September 26, 2003
Phone:		Pages:	4
Re:	Sam's Hollow Application No. 11-7491	CC:	

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•**Comments:** Attached is the Order Denying Motion to Compel Discovery and Prehearing Order.

SEP 22 2003

Department of Water Resources

LAW OFFICES OF

**RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED**

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
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
DAVID E. ALEXANDER
LISA M. CHRISTON
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
PATRICK N. GEORGE
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LISA A. WOOD, CPA
STEPHEN J. MUHONEN
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CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

BOISE OFFICE

CONRAD J. AIKEN
THEODORE C. PETERS
DEBORAH L. LEHOSIT

101 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE

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

September 17, 2003

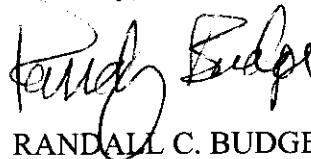
Gary Spackman
Hearing Officer
Idaho Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706
Fax: 208-327-7866

Re: *Sam's Hollow Water Company*
Application for Permit No. 11-7481 (Phase I)
Application for Permit No. 11-7491 (Phase II)

Dear Gary:

Your prompt consideration of the enclosed Motion to Compel Discovery and proposed Order would be appreciated. Thank you.

-Sincerely,



RANDALL C. BUDGE

RCB:rr
Attachments

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 11-07481 AND) ORDER
11-07491 IN THE NAME OF)
SAM'S HOLLOW WATERCOMPANY)
_____)

Upon duly-filed Motion and good cause appearing therefor,

IT IS HEREBY ORDERED that the Protestants herein respond to the Applicant's discovery requests dated September 9, 2003, no later than October 3, 2003.

DATED September _____, 2003.

GARY SPACKMAN
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this _____ day of September, 2003, I mailed a true and complete copy of the foregoing document, postage prepaid, to the following:

Randall C. Budge
Racine, Olson, Nye, Budge & Bailey
P.O. Box 1391
Pocatello, Idaho 83204-1391

PacifiCorp
c/o Jody Williams
Holme, Roberts & Owen
299 S. Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

Cheryl S. Williss, Chief
Division of Water Resources
U.S. Fish & Wildlife Service
P.O. Box 25456 Denver Federal Center
Denver, Colorado 80225-0286

St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. Highway 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287

SEP 22 2003

Department of Water Resources

Randall C. Budge
 RACINE, OLSON, NYE, BUDGE & BAILEY
 CHARTERED
 P.O. Box 1391; 201 E. Center Street
 Pocatello, Idaho 83204-1391
 Telephone: 208-232-6101
 Fax: 208-232-6109

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
 FOR PERMIT NOS. 11-07481 AND)
 11-07491 IN THE NAME OF) **MOTION TO COMPEL DISCOVERY**
 SAM'S HOLLOW WATERCOMPANY)
 _____)

COMES NOW Applicant, through counsel, pursuant to IDAPA 37.01.01, Rule 521, and hereby respectfully moves the Presiding Officer for an Order compelling the objecting parties in this proceeding to respond to Applicant's First Interrogatories, Requests for Admission and Requests for Production to Protestants filed herein on September 9, 2003, copies of which are attached, no later than five (5) days prior to the hearing scheduled for October 8, 2003. This motion is made upon the grounds and for the reasons as follows:

1. Application for Permit No. 11-07481 (Phase I) was filed with the Department in November 2001 and Application No. 11-07491 (Phase II) was filed with the Department in January 2002. Processing of these Applications was delayed by the Department pending the development of the Ground Water Management Plan for the Bear River Ground Water Management Area. A Preliminary Order Adopting a Ground Water Management Plan was issued by the Department on February 24, 2003, which subsequently became a Final Order. Thereafter, processing of these Applications resumed.
2. Protests to Application No. 11-07481 were originally scheduled for hearing in May, 2003. At the Protestants' request and upon agreement of the Applicants, this hearing was continued to permit

proceedings to be combined on both Applications pertaining to Phase I and Phase II of the Development and to permit an inspection of the development and meeting with Protestants.

3. The Department and Protestants have been provided with all pertinent information pertaining to these Applications, including the following documents:

- Copies of the Applications for Permit.
- Phase I and Phase II Narratives in support of Application.
- Phase I and Phase II Place of Use and Point of Diversion Map.
- Phase I and Phase II Water Requirements and Water Balance Analysis.
- Phase I and Phase II Depletion Analysis as per Robert Hill.
- Agreement dated 3/4/2002 between Applicant and Fish Haven Water Users Association providing for the use of shares in Fish Haven for mitigation purposes.
- Preliminary Order Adopting a Ground Water Management Plan issued by IDWR on 2/24/03.
- Affidavits of Glen Transtrum, J. Hume Dunford, Eldon S. Kearl regarding historic irrigation and use practices.

4. Additionally an on-site inspection and meeting was held in Fish Haven on July 10, 2003, with Protestants and their representatives. The site was inspected, mitigation plan reviewed and questions answered. Based upon discussions at that time and subsequently Applicant was led to believe that all concerns raised by the Protestants had been satisfied and that the Protests would be withdrawn. Protestant PacifiCorp did indicate that certain questions raised by its Hydrologist Robert Hill needed to first be satisfied and Applicant's Hydrologist Charles Brockway has addressed these concerns and it is anticipated they will be shortly resolved.

Bear Lake Watch, Inc., has recently withdrawn its Protest. The other Protestants, U.S. Fish & Wildlife Service, Leon V. Howell and St. Charles Irrigation Company have not. Nor have any of those Protestants indicated the basis of their protests other than as stated generally in the Protest as filed. Accordingly, although the Applicant has fully provided and disclosed all relevant information pertaining to the Applications, the Protestants, other than PacifiCorp, have not given information regarding the nature of their protest and what evidence supports them.

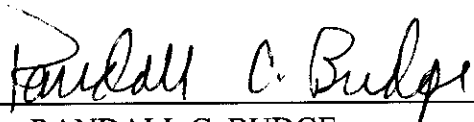
5. While Applicant reasonably anticipated the Protest had been resolved and would be withdrawn well prior to the hearing, to date, other than Bear Lake Watch, the protests remain pending. Accordingly, Applicant submitted to Protestants on September 9, 2003, some 30 days prior to the hearing,

the attached discovery requests consisting of six Requests for Admission, three Requests for Production and five Interrogatories. These discovery requests are not extensive nor burdensome and request basic information about the protests which is reasonable and necessary for the Applicant to prepare for the hearing. Applicant did not file this Motion to Compel previously, believing it was unnecessary and that any Protestants who intended to proceed to hearing would timely comply. Applicant promptly filed this Motion to Compel upon receiving indication from the Department that some Protestants may not respond absent an Order from the Hearing Officer.

6. It is reasonable for the Hearing Officer to enter an Order compelling responses to this discovery no later than five (5) days prior to the hearing to provide Applicant with a reasonable opportunity to prepare for whatever case the Protestants intend to present, which is presently unknown. A proposed Order is attached.

DATED this 18th day of September, 2003.

RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED

By 
RANDALL C. BUDGE
Attorney for Applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of September, 2003, I mailed a true and complete copy of the foregoing document, postage prepaid, to the following:

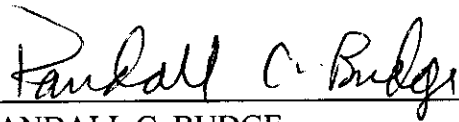
PacifiCorp
c/o Jody Williams
Holme, Roberts & Owen
299 S. Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

Cheryl S. Williss, Chief
Division of Water Resources
U.S. Fish & Wildlife Service
P.O. Box 25456 Denver Federal Center
Denver, Colorado 80225-0286

~~Bear Lake Watch
c/o Dave Cottle, President
P.O. Box 205
Fish Haven, Idaho 83287~~

St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. Highway 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287



RANDALL C. BUDGE

Randall C. Budge
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109
Attorneys for Applicant
Sam's Hollow Water Company

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

11-7481
IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 11-07491 IN THE)
NAME OF SAM'S HOLLOW WATER)
COMPANY)
APPLICANT'S FIRST
INTERROGATORIES TO
PROTESTANTS

TO: PACIFICORP AND ITS ATTORNEY JODY WILLIAMS;
U.S. FISH & WILDLIFE SERVICE AND ITS ATTORNEY CHERYL C. WILLISS;
LEON V. HOWELL;
ST. CHARLES IRRIGATION COMPANY IN CARE OF GLENN RICH, PRESIDENT;
BEAR LAKE WATCH, INC., IN CARE OF DAVID COTTLE, PRESIDENT.

COMES NOW Applicant, by and through counsel, pursuant to Rule 33 of the Idaho Rules of Civil Procedure and IDAPA 37.01.01, Rule 520, and hereby requests that each Protestant separately in writing and under oath answer the following Interrogatories within 15 days:

INTERROGATORY NO. 1: Please provide Applicant with a list and description of all exhibits which Protestants intend or expect to utilize at the protest hearing scheduled before the Idaho Department of Water Resources to commence on October 8, 2003 at 9:30 a.m. at the Bear Lake Senior Center,

Montpelier, Idaho, giving a description of each exhibit and a summary of the exhibit's expected relevance to this action.

INTERROGATORY NO. 2: State the name and last known address of each person consulted as an expert witness on your behalf concerning any facts relating to this litigation; and, with respect to each, state the facts concerning which he has been consulted, the opinion or opinions he has expressed and whether or not he has issued a written report of any form.

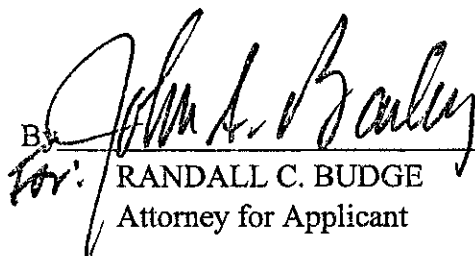
INTERROGATORY NO. 3: Name and identify the last known address and phone number of each person who you will, or may, call as a witness at the protest hearing in this action and briefly state the facts to which you expect each such witness to testify.

INTERROGATORY NO. 4: Please identify and describe each item which you will, or may, attempt to introduce into evidence at the protest hearing of this action.

INTERROGATORY NO. 5: With regard to Applicant's Requests for Admission, for each request which you do not admit, describe precisely and in detail why you believe the request is not true and all evidence you will present at the protest hearing in an attempt to establish such request is not true.

DATED this 9th day of September, 2003.

RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED

By 
for: RANDALL C. BUDGE
Attorney for Applicant

CERTIFICATE OF MAILING

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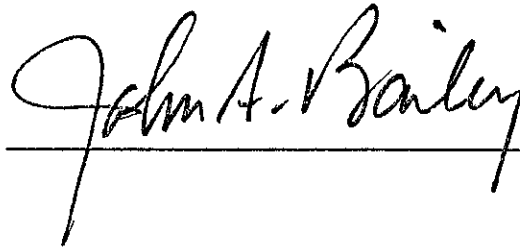
PacifiCorp
c/o Jody Williams
Holme, Roberts & Owen
299 S. Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

Cheryl S. Williss, Chief
Division of Water Resources
U.S. Fish & Wildlife Service
P.O. Box 25456 Denver Federal Center
Denver, Colorado 80225-0286

Bear Lake Watch
c/o Dave Cottle, President
P.O. Box 205
Fish Haven, Idaho 83287

St. Charles Irrigation Company
c/o Glenn Rich
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St. Charles, Idaho 83272

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Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109
Attorneys for Applicant
Sam's Hollow Water Company

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO. 11-07491 IN THE)	APPLICANT'S FIRST
NAME OF SAM'S HOLLOW WATER)	REQUESTS FOR PRODUCTION
COMPANY)	TO PROTESTANTS
_____)	

TO: PACIFICORP AND ITS ATTORNEY JODY WILLIAMS;
U.S. FISH & WILDLIFE SERVICE AND ITS ATTORNEY CHERYL C. WILLISS;
LEON V. HOWELL;
ST. CHARLES IRRIGATION COMPANY IN CARE OF GLENN RICH, PRESIDENT;
BEAR LAKE WATCH, INC., IN CARE OF DAVID COTTLE, PRESIDENT.

COMES NOW Applicant, by and through counsel, pursuant to Rule 34 of the Idaho Rules of Civil Procedure and IDAPA 37.01.01, Rule 520, and hereby requests that each Protestant separately produce the following documents in response to the following Requests within 15 days:

REQUEST NO. 1: Please produce a copy of all documents referred to in your Answers to Interrogatories.

REQUEST NO. 2: Please produce a copy of all exhibits you intend to present at the protest hearing on this matter.

REQUEST NO. 3: Please produce all reports of experts related to the subject Applications and/or your objections or protests thereto.

DATED this 9th day of September, 2003.

RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED

By John A. Bailey
For: RANDALL C. BUDGE
Attorney for Applicant

CERTIFICATE OF MAILING

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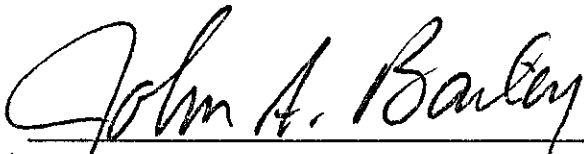
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Cheryl S. Williss, Chief
Division of Water Resources
U.S. Fish & Wildlife Service
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Denver, Colorado 80225-0286

Bear Lake Watch
c/o Dave Cottle, President
P.O. Box 205
Fish Haven, Idaho 83287

St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. Highway 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287


for: RANDALL C. BUDGE

Randall C. Budge
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109
Attorneys for Applicant
Sam's Hollow Water Company

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO. 11-07491 IN THE)	APPLICANT'S REQUESTS
NAME OF SAM'S HOLLOW WATER)	FOR ADMISSION TO
COMPANY)	PROTESTANTS
_____)	

TO: PACIFICORP AND ITS ATTORNEY JODY WILLIAMS;
U.S. FISH & WILDLIFE SERVICE AND ITS ATTORNEY CHERYL C. WILLISS;
LEON V. HOWELL;
ST. CHARLES IRRIGATION COMPANY IN CARE OF GLENN RICH, PRESIDENT;
BEAR LAKE WATCH, INC., IN CARE OF DAVID COTTLE, PRESIDENT.

COMES NOW Applicant, by and through counsel, pursuant to Rule 36 of the Idaho Rules of Civil Procedure and IDAPA 37.01.01, Rule 520, and hereby requests that each Protestant separately admit or deny each of the following Requests for Admission within 15 days, in writing, signed and under oath. In accordance with Rule 36(a), each Request shall be admitted unless, within 15 days after service of the Request, the parties to whom the Request is directed serves upon the requesting party a written answer or objection, signed under oath.

REQUEST FOR ADMISSION NO. 1: Admit that the proposed use by Applicant will not reduce the quantity of water under existing water rights.

REQUEST FOR ADMISSION NO. 2: Admit that the proposed water supply is sufficient for the purpose intended by Applicant.

REQUEST FOR ADMISSION NO. 3: Admit that the Applicant's Applications are made in good faith and not for delay or speculative purposes.

REQUEST FOR ADMISSION NO. 4: Admit that the Applicant has sufficient financial resources with which to complete the project.

REQUEST FOR ADMISSION NO. 5: Admit that the proposed use as described in the Applications does not conflict with the local public interests.

REQUEST FOR ADMISSION NO. 6: Admit that the proposed use is not contrary to the conservation of water resources within the State of Idaho.

DATED this 9th day of September, 2003.

RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED

By 
For: RANDALL C. BUDGE
Attorney for Applicant

CERTIFICATE OF MAILING

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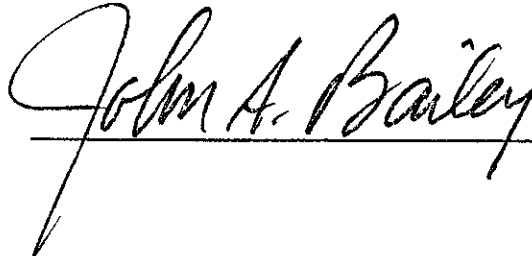
PacifiCorp
c/o Jody Williams
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Cheryl S. Williss, Chief
Division of Water Resources
U.S. Fish & Wildlife Service
P.O. Box 25456 Denver Federal Center
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Bear Lake Watch
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St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. Highway 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287



John A. Bailey



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

September 18, 2003

SAMS HOLLOW WATER CO
201 E CENTER ST
POCATELLO ID 83201

RECEIVED

SEP 23 2003

Department of Water Resources

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Application to Permit No.
Withdrawal of Protest

Dear Applicant(s):

The Department of Water Resources has received withdrawal(s) of protest against the above referenced application. Withdrawals have been received from the following:

- 1) BEAR LAKE WATCH INC

There are remaining protests against this application which need to be resolved before the application can be considered for approval.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

W Roger Warner
Water Right Supervisor

CC: IDWR State Office

WRW:sc



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

September 18, 2003

KARL J. DREHER
Director

BEAR LAKE WATCH INC
PO BOX 205
FISH HAVEN, ID 83287

Application to Permit No. 11-7491
Withdrawal of Protest

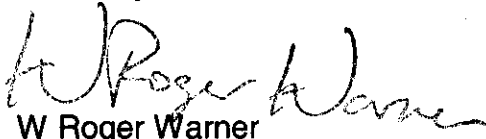
Dear Protestant(s):

The Department of Water Resources acknowledges receipt of your withdrawal of protest against the above referenced application.

There are remaining protests against this application which need to be resolved before the application can be considered for approval.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,


W Roger Warner
Water Right Supervisor

CC: IDWR State Office

WRW:sc

David R. Cottle
BEAR LAKE WATCH, INC.
P.O. Box 205
Fish Haven, ID 83287
Telephone: (208) 945-2872

Kap
RECEIVED
SEP 15 2003
Department of Water Resources

Representative for Bear Lake Watch, Inc.

**BEFORE THE
DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO**

)
**In the Matter of the
Application of
Sams Hollow Water Company
Application # 11-7491**

)
)
)
)
)
**Withdrawal of Protest of
Bear Lake Watch, Inc.
Protestant**

1. Bear Lake Watch, represented by David Cottle, hereby withdraws our protest of Sam's Hollow water applications # 11-7491 and # 11-7481.
2. Our concern about the amount of water to be returned to the Bear River / Bear Lake system was clarified. It was agreed that the amount returned to the Bear River / Bear Lake system is the amount of water diverted for irrigation that would have yielded the depletion of the irrigated land.
3. Our further concern about how the water was to be returned to the Bear River / Bear Lake system was discussed in detail. Returning the water to the lake via a pipe may be a simple way to meet the letter of the law, but does not meet the goals of various state and local agencies nor is it best for the community as a whole. Representatives from Sam's Hollow, Mr. Con Gerdes and Mr. Chuck Brockway and their legal consul, Mr. Randy Budge, all stated the they would prefer that the mitigated water be left in the natural channel of Fish Haven creek. This is the best solution for compliance with Idaho's Ground Water Management Plan. Although its implementation represents some short term obstacles, it is the ultimate win-win for everyone in the long term and benefits many interests. As more and more acreage is developed residentially and more acreage is taken out of irrigated agriculture, more and more water will flow via the natural channel to Bear Lake. As the water flows increase, the aquatic insects and vegetation natural to Fish Haven creek will return and the riparian habitat will improve. This will enable the stream to become a more consistent spawning stream for the Bear Lake Cutthroat trout. It is the right method of returning the mitigated water to the Bear River / Bear Lake system. It is best for the Bear Lake Cutthroat trout, best for the local ecology and best for the community. Returning the mitigated water to Bear Lake via the natural stream channel is supported by Idaho Fish & Game, US Fish & Wildlife, Idaho's Office of Species Conservation, Trout Unlimited and by PacifiCorp as evidenced by their collective participation in the St. Charles-Fish Haven Irrigation & Fisheries Improvement Working Group.

Database updated 7/6/03. dg

4. Therefore, it is Bear Lake Watch's recommendation that IDWR make it a condition of permit approval to have mitigated water remain in the natural channel of the watershed being considered on its return to the Bear River / Bear Lake system. This should become the standard. The obstacles to implement this can be overcome with the joint efforts of all the interested parties. It should be the developer(s) responsibility to insure the proper amount of mitigated water is returned to the system. It should not be a burden to the local Irrigation Companies. Bear Lake Watch will assist in any way it can.

DATED: this 12TH day of Sept, 2003.

BEAR LAKE WATCH, INC.

BY David R. Cottle
David R. Cottle

BEAR LAKE WATCH, INC.
P.O. Box 205
Fish Haven, ID 83287
Telephone: (208) 945-2872

MAILING CERTIFICATE

On this 12th day of Sept, 2003, I mailed a true and correct copy of the foregoing Protest, postage prepaid, to:

Idaho Division of Water Resources
Eastern Division
900 North Skyline Drive
Idaho Falls, ID 83402

Karl Dreher, Director
Idaho Dept. of Water Resources
1301 North Orchard Street
Boise, ID 83706

Randall C. Budge
Racine, Olson, Nye, Cooper, & Budge
P.O. Box 1391
Pocatello, ID 83204-0391

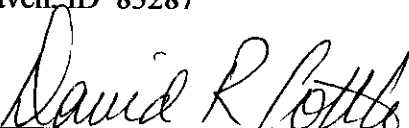
Claudia Conder
C/O PacifiCorp
1407 West North Temple
Salt Lake City, UT 84140

Jody L. Williams
Holme, Roberts & Owen LLP
C/O PacifiCorp
200 S. Main St., Suite 1800
Salt Lake City, UT 84111-2263

St. Charles Irrigation Company
C/O Glenn Rich
5473 US 89
St. Charles, ID 83272

Leon Howell
Box 117
Fish Haven, ID 83287

Bill Stock, President
Fish Haven Irrigation Company
PO Box 127
Fish Haven, ID 83287


Signature

David R. Cottle
BEAR LAKE WATCH, INC.
P.O. Box 205
Fish Haven, ID 83287
Telephone: (208) 945-2872

RECEIVED
SEP 18 2003

Representative for Bear Lake Watch, Inc.

Department of Water Resources
Eastern Region

**BEFORE THE
DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO**

)
**In the Matter of the
Application of
Sams Hollow Water Company
Application # 11-7491**

)
)
)
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Protestant**

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2. Our concern about the amount of water to be returned to the Bear River / Bear Lake system was clarified. It was agreed that the amount returned to the Bear River / Bear Lake system is the amount of water diverted for irrigation that would have yielded the depletion of the irrigated land.
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DATED: this 12th day of Sept, 2003.

BEAR LAKE WATCH, INC.

BY David R Cottle
David R. Cottle

BEAR LAKE WATCH, INC.

P.O. Box 205

Fish Haven, ID 83287

Telephone: (208) 945-2872

MAILING CERTIFICATE

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Protest, postage prepaid, to:

Idaho Division of Water Resources
Eastern Division
900 North Skyline Drive
Idaho Falls, ID 83402

Karl Dreher, Director
Idaho Dept. of Water Resources
1301 North Orchard Street
Boise, ID 83706

Randall C. Budge
Racine, Olson, Nye, Cooper, & Budge
P.O. Box 1391
Pocatello, ID 83204-0391

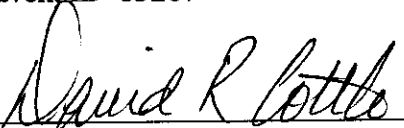
Claudia Conder
C/O PacifiCorp
1407 West North Temple
Salt Lake City, UT 84140

Jody L. Williams
Holme, Roberts & Owen LLP
C/O PacifiCorp
200 S. Main St., Suite 1800
Salt Lake City, UT 84111-2263

St. Charles Irrigation Company
C/O Glenn Rich
5473 US 89
St. Charles, ID 83272

Leon Howell
Box 117
Fish Haven, ID 83287

Bill Stock, President
Fish Haven Irrigation Company
PO Box 127
Fish Haven, ID 83287


Signature

RECEIVED

SEP 18 2003

Department of Water Resources

LAW OFFICES OF

**RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED**

CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1991
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

SENDER'S E-MAIL ADDRESS: rcb@racineolaw.net

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK S. MADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC L. OLSEN
DAVID E. ALEXANDER
LISA M. CHRISTON
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
PATRICK N. GEORGE
SCOTT J. SMITH
LISA A. WOOD, CPA
STEPHEN J. MUNCHEN
BRENT L. WHITING

BOISE OFFICE

CONRAD J. AIKEN
THEODORE C. PETERS
DEBORAH L. LEMBIT

101 SOUTH CAPITAL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 399-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE

477 SHoup AVENUE
SUITE 208A
IDAHO FALLS, ID 83408
TELEPHONE: (208) 338-6101
FACSIMILE: (208) 338-6109

September 17, 2003

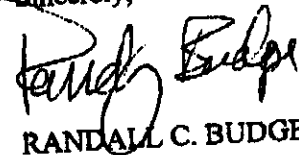
Gary Spackman
Hearing Officer
Idaho Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706
Fax: 208-327-7866

Re: *Sam's Hollow Water Company*
Application for Permit No. 11-7481 (Phase I)
Application for Permit No. 11-7491 (Phase II)

Dear Gary:

Your prompt consideration of the enclosed Motion to Compel Discovery and proposed Order would be appreciated. Thank you.

Sincerely,


RANDALL C. BUDGE

RCB:rr
Attachments

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 11-07481 AND) ORDER
11-07491 IN THE NAME OF)
SAM'S HOLLOW WATERCOMPANY)
_____)

Upon duly-filed Motion and good cause appearing therefor,
IT IS HEREBY ORDERED that the Protestants herein respond to the Applicant's discovery
requests dated September 9, 2003, no later than October 3, 2003.

DATED September _____, 2003.

GARY SPACKMAN
Hearing Officer

ORDER - 1

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this _____ day of September, 2003, I mailed a true and complete copy of the foregoing document, postage prepaid, to the following:

Randall C. Budge
Racine, Olson, Nye, Budge & Bailey
P.O. Box 1391
Pocatello, Idaho 83204-1391

PacifiCorp
c/o Jody Williams
Holme, Roberts & Owen
299 S. Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

Cheryl S. Williss, Chief
Division of Water Resources
U.S. Fish & Wildlife Service
P.O. Box 25456 Denver Federal Center
Denver, Colorado 80225-0286

St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. Highway 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287

ORDER - 2

Randall C. Budge
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 11-07481 AND)
11-07491 IN THE NAME OF)
SAM'S HOLLOW WATERCOMPANY)

MOTION TO COMPEL DISCOVERY

COMES NOW Applicant, through counsel, pursuant to IDAPA 37.01.01, Rule 521, and hereby respectfully moves the Presiding Officer for an Order compelling the objecting parties in this proceeding to respond to Applicant's First Interrogatories, Requests for Admission and Requests for Production to Protestants filed herein on September 9, 2003, copies of which are attached, no later than five (5) days prior to the hearing scheduled for October 8, 2003. This motion is made upon the grounds and for the reasons as follows:

1. Application for Permit No. 11-07481 (Phase I) was filed with the Department in November 2001 and Application No. 11-07491 (Phase II) was filed with the Department in January 2002. Processing of these Applications was delayed by the Department pending the development of the Ground Water Management Plan for the Bear River Ground Water Management Area. A Preliminary Order Adopting a Ground Water Management Plan was issued by the Department on February 24, 2003, which subsequently became a Final Order. Thereafter, processing of these Applications resumed.

2. Protests to Application No. 11-07481 were originally scheduled for hearing in May, 2003. At the Protestants' request and upon agreement of the Applicants, this hearing was continued to permit

MOTION TO COMPEL DISCOVERY - 1

proceedings to be combined on both Applications pertaining to Phase I and Phase II of the Development and to permit an inspection of the development and meeting with Protestants.

3. The Department and Protestants have been provided with all pertinent information pertaining to these Applications, including the following documents:

- Copies of the Applications for Permit.
- Phase I and Phase II Narratives in support of Application.
- Phase I and Phase II Place of Use and Point of Diversion Map.
- Phase I and Phase II Water Requirements and Water Balance Analysis.
- Phase I and Phase II Depletion Analysis as per Robert Hill.
- Agreement dated 3/4/2002 between Applicant and Fish Haven Water Users Association providing for the use of shares in Fish Haven for mitigation purposes.
- Preliminary Order Adopting a Ground Water Management Plan issued by IDWR on 2/24/03.
- Affidavits of Glen Transtrum, J. Hume Dunford, Eldon S. Kearn regarding historic irrigation and use practices.

4. Additionally an on-site inspection and meeting was held in Fish Haven on July 10, 2003, with Protestants and their representatives. The site was inspected, mitigation plan reviewed and questions answered. Based upon discussions at that time and subsequently Applicant was led to believe that all concerns raised by the Protestants had been satisfied and that the Protests would be withdrawn. Protestant PacifiCorp did indicate that certain questions raised by its Hydrologist Robert Hill needed to first be satisfied and Applicant's Hydrologist Charles Brockway has addressed these concerns and it is anticipated they will be shortly resolved.

Bear Lake Watch, Inc., has recently withdrawn its Protest. The other Protestants, U.S. Fish & Wildlife Service, Leon V. Howell and St. Charles Irrigation Company have not. Nor have any of those Protestants indicated the basis of their protests other than as stated generally in the Protest as filed. Accordingly, although the Applicant has fully provided and disclosed all relevant information pertaining to the Applications, the Protestants, other than PacifiCorp, have not given information regarding the nature of their protest and what evidence supports them.

5. While Applicant reasonably anticipated the Protest had been resolved and would be withdrawn well prior to the hearing, to date, other than Bear Lake Watch, the protests remain pending. Accordingly, Applicant submitted to Protestants on September 9, 2003, some 30 days prior to the hearing,

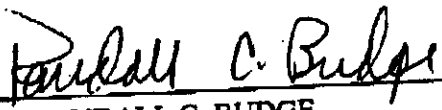
MOTION TO COMPEL DISCOVERY - 2

the attached discovery requests consisting of six Requests for Admission, three Requests for Production and five Interrogatories. These discovery requests are not extensive nor burdensome and request basic information about the protests which is reasonable and necessary for the Applicant to prepare for the hearing. Applicant did not file this Motion to Compel previously, believing it was unnecessary and that any Protestants who intended to proceed to hearing would timely comply. Applicant promptly filed this Motion to Compel upon receiving indication from the Department that some Protestants may not respond absent an Order from the Hearing Officer.

6. It is reasonable for the Hearing Officer to enter an Order compelling responses to this discovery no later than five (5) days prior to the hearing to provide Applicant with a reasonable opportunity to prepare for whatever case the Protestants intend to present, which is presently unknown. A proposed Order is attached.

DATED this 18th day of September, 2003.

RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED

By 
RANDALL C. BUDGE
Attorney for Applicant

MOTION TO COMPEL DISCOVERY - 3

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of September, 2003, I mailed a true and complete copy of the foregoing document, postage prepaid, to the following:

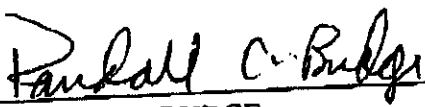
PacifiCorp
c/o Jody Williams
Holme, Roberts & Owen
299 S. Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

Cheryl S. Williss, Chief
Division of Water Resources
U.S. Fish & Wildlife Service
P.O. Box 25456 Denver Federal Center
Denver, Colorado 80225-0286

~~Bear Lake Watch
c/o Dave Cottle, President
P.O. Box 205
Fish Haven, Idaho 83287~~

St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. Highway 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287



RANDALL C. BUDGE

MOTION TO COMPEL DISCOVERY - 4

Randall C. Budge
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109
Attorneys for Applicant
Sam's Hollow Water Company

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

11-7481
IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 11-07491 IN THE)
NAME OF SAM'S HOLLOW WATER)
COMPANY)
APPLICANT'S FIRST
INTERROGATORIES TO
PROTESTANTS

TO: PACIFICORP AND ITS ATTORNEY JODY WILLIAMS;
U.S. FISH & WILDLIFE SERVICE AND ITS ATTORNEY CHERYL C. WILLISS;
LEON V. HOWELL;
ST. CHARLES IRRIGATION COMPANY IN CARE OF GLENN RICH, PRESIDENT;
BEAR LAKE WATCH, INC., IN CARE OF DAVID COTTLE, PRESIDENT.

COMES NOW Applicant, by and through counsel, pursuant to Rule 33 of the Idaho Rules of Civil Procedure and IDAPA 37.01.01, Rule 520, and hereby requests that each Protestant separately in writing and under oath answer the following Interrogatories within 15 days:

INTERROGATORY NO. 1: Please provide Applicant with a list and description of all exhibits which Protestants intend or expect to utilize at the protest hearing scheduled before the Idaho Department of Water Resources to commence on October 8, 2003 at 9:30 a.m. at the Bear Lake Senior Center,

APPLICANT'S FIRST INTERROGATORIES TO PROTESTANTS - 1

Montpelier, Idaho, giving a description of each exhibit and a summary of the exhibit's expected relevance to this action.

INTERROGATORY NO. 2: State the name and last known address of each person consulted as an expert witness on your behalf concerning any facts relating to this litigation; and, with respect to each, state the facts concerning which he has been consulted, the opinion or opinions he has expressed and whether or not he has issued a written report of any form.

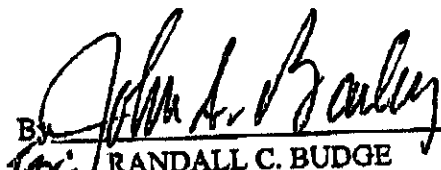
INTERROGATORY NO. 3: Name and identify the last known address and phone number of each person who you will, or may, call as a witness at the protest hearing in this action and briefly state the facts to which you expect each such witness to testify.

INTERROGATORY NO. 4: Please identify and describe each item which you will, or may, attempt to introduce into evidence at the protest hearing of this action.

INTERROGATORY NO. 5: With regard to Applicant's Requests for Admission, for each request which you do not admit, describe precisely and in detail why you believe the request is not true and all evidence you will present at the protest hearing in an attempt to establish such request is not true.

DATED this 9th day of September, 2003.

RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED

By 
for: RANDALL C. BUDGE
Attorney for Applicant

APPLICANT'S FIRST INTERROGATORIES TO PROTESTANTS - 2

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th of September, 2003, I mailed a true and complete copy of the foregoing document, postage prepaid, to the following:

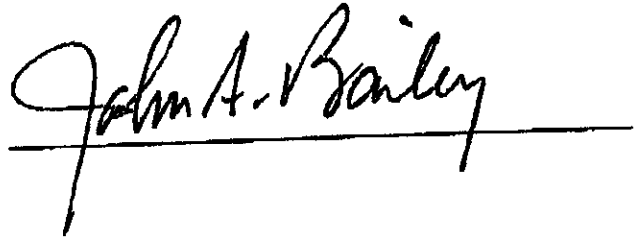
PacifiCorp
c/o Jody Williams
Holme, Roberts & Owen
299 S. Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

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P.O. Box 25456 Denver Federal Center
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Bear Lake Watch
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P.O. Box 205
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St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. Highway 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287

A handwritten signature in black ink, reading "John A. Bailey", is written over a horizontal line.

APPLICANT'S FIRST INTERROGATORIES TO PROTESTANTS - 3

Randall C. Budge
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109
Attorneys for Applicant
Sam's Hollow Water Company

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO. 11-07491 IN THE)	APPLICANT'S FIRST
NAME OF SAM'S HOLLOW WATER)	REQUESTS FOR PRODUCTION
COMPANY)	TO PROTESTANTS
_____)	

TO: PACIFICORP AND ITS ATTORNEY JODY WILLIAMS;
U.S. FISH & WILDLIFE SERVICE AND ITS ATTORNEY CHERYL C. WILLISS;
LEON V. HOWELL;
ST. CHARLES IRRIGATION COMPANY IN CARE OF GLENN RICH, PRESIDENT;
BEAR LAKE WATCH, INC., IN CARE OF DAVID COTTLE, PRESIDENT.

COMES NOW Applicant, by and through counsel, pursuant to Rule 34 of the Idaho Rules of Civil Procedure and IDAPA 37.01.01, Rule 520, and hereby requests that each Protestant separately produce the following documents in response to the following Requests within 15 days:

REQUEST NO. 1: Please produce a copy of all documents referred to in your Answers to Interrogatories.

REQUEST NO. 2: Please produce a copy of all exhibits you intend to present at the protest hearing on this matter.

APPLICANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS TO PROTESTANTS - 1

REQUEST NO. 3: Please produce all reports of experts related to the subject Applications
and/or your objections or protests thereto.

DATED this 9th day of September, 2003.

RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED

By 
for. RANDALL C. BUDGE
Attorney for Applicant

APPLICANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS TO PROTESTANTS - 2

CERTIFICATE OF MAILING

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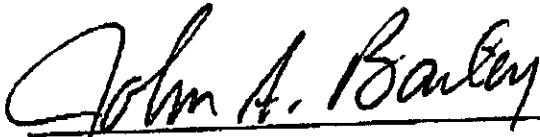
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U.S. Fish & Wildlife Service
P.O. Box 25456 Denver Federal Center
Denver, Colorado 80225-0286

Bear Lake Watch
c/o Dave Cottle, President
P.O. Box 205
Fish Haven, Idaho 83287

St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. Highway 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287


for RANDALL C. BUDGE

APPLICANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS TO PROTESTANTS - 3

REQUEST FOR ADMISSION NO. 1: Admit that the proposed use by Applicant will not reduce the quantity of water under existing water rights.

REQUEST FOR ADMISSION NO. 2: Admit that the proposed water supply is sufficient for the purpose intended by Applicant.

REQUEST FOR ADMISSION NO. 3: Admit that the Applicant's Applications are made in good faith and not for delay or speculative purposes.

REQUEST FOR ADMISSION NO. 4: Admit that the Applicant has sufficient financial resources with which to complete the project.

REQUEST FOR ADMISSION NO. 5: Admit that the proposed use as described in the Applications does not conflict with the local public interests.

REQUEST FOR ADMISSION NO. 6: Admit that the proposed use is not contrary to the conservation of water resources within the State of Idaho.

DATED this 9th day of September, 2003.

RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED

By John A. Bailey
For RANDALL C. BUDGE
Attorney for Applicant

APPLICANT'S REQUESTS FOR ADMISSION TO PROTESTANTS - 2

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th of September, 2003, I mailed a true and complete copy of the foregoing document, postage prepaid, to the following:

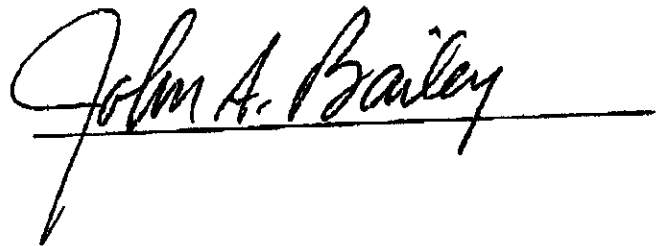
PacifiCorp
c/o Jody Williams
Holme, Roberts & Owen
299 S. Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

Cheryl S. Williss, Chief
Division of Water Resources
U.S. Fish & Wildlife Service
P.O. Box 25456 Denver Federal Center
Denver, Colorado 80225-0286

Bear Lake Watch
c/o Dave Cottle, President
P.O. Box 205
Fish Haven, Idaho 83287

St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. Highway 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287

A handwritten signature in black ink, reading "John A. Bailey", is written over a horizontal line.

APPLICANT'S REQUESTS FOR ADMISSION TO PROTESTANTS - 3

RECEIVED

SEP 15 2003

Department of Water Resources

Randall C. Budge
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109
Attorneys for Applicant
Sam's Hollow Water Company

RECEIVED

SEP 10 2003

Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO. 11-07491 IN THE)	APPLICANT'S FIRST
NAME OF SAM'S HOLLOW WATER)	INTERROGATORIES TO
COMPANY)	PROTESTANTS
_____)	

TO: PACIFICORP AND ITS ATTORNEY JODY WILLIAMS;
U.S. FISH & WILDLIFE SERVICE AND ITS ATTORNEY CHERYL C. WILLISS;
LEON V. HOWELL;
ST. CHARLES IRRIGATION COMPANY IN CARE OF GLENN RICH, PRESIDENT;
BEAR LAKE WATCH, INC., IN CARE OF DAVID COTTLE, PRESIDENT.

COMES NOW Applicant, by and through counsel, pursuant to Rule 33 of the Idaho Rules of Civil Procedure and IDAPA 37.01.01, Rule 520, and hereby requests that each Protestant separately in writing and under oath answer the following Interrogatories within 15 days:

INTERROGATORY NO. 1: Please provide Applicant with a list and description of all exhibits which Protestants intend or expect to utilize at the protest hearing scheduled before the Idaho Department of Water Resources to commence on October 8, 2003 at 9:30 a.m. at the Bear Lake Senior Center,

APPLICANT'S FIRST INTERROGATORIES TO PROTESTANTS - 1

Montpelier, Idaho, giving a description of each exhibit and a summary of the exhibit's expected relevance to this action.

INTERROGATORY NO. 2: State the name and last known address of each person consulted as an expert witness on your behalf concerning any facts relating to this litigation; and, with respect to each, state the facts concerning which he has been consulted, the opinion or opinions he has expressed and whether or not he has issued a written report of any form.

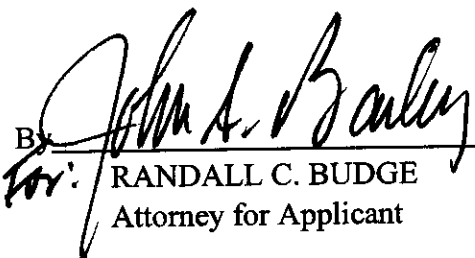
INTERROGATORY NO. 3: Name and identify the last known address and phone number of each person who you will, or may, call as a witness at the protest hearing in this action and briefly state the facts to which you expect each such witness to testify.

INTERROGATORY NO. 4: Please identify and describe each item which you will, or may, attempt to introduce into evidence at the protest hearing of this action.

INTERROGATORY NO. 5: With regard to Applicant's Requests for Admission, for each request which you do not admit, describe precisely and in detail why you believe the request is not true and all evidence you will present at the protest hearing in an attempt to establish such request is not true.

DATED this 9th day of September, 2003.

RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED

By 
for: RANDALL C. BUDGE
Attorney for Applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th of September, 2003, I mailed a true and complete copy of the foregoing document, postage prepaid, to the following:

PacifiCorp
c/o Jody Williams
Holme, Roberts & Owen
299 S. Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

Cheryl S. Williss, Chief
Division of Water Resources
U.S. Fish & Wildlife Service
P.O. Box 25456 Denver Federal Center
Denver, Colorado 80225-0286

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5473 U.S. Highway 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287

A handwritten signature in black ink, reading "John A. Bailey", is written over a horizontal line.

Randall C. Budge
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109
Attorneys for Applicant
Sam's Hollow Water Company

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO. 11-07491 IN THE)	APPLICANT'S FIRST
NAME OF SAM'S HOLLOW WATER)	REQUESTS FOR PRODUCTION
COMPANY)	TO PROTESTANTS
_____)	

TO: PACIFICORP AND ITS ATTORNEY JODY WILLIAMS;
U.S. FISH & WILDLIFE SERVICE AND ITS ATTORNEY CHERYL C. WILLISS;
LEON V. HOWELL;
ST. CHARLES IRRIGATION COMPANY IN CARE OF GLENN RICH, PRESIDENT;
BEAR LAKE WATCH, INC., IN CARE OF DAVID COTTLE, PRESIDENT.

COMES NOW Applicant, by and through counsel, pursuant to Rule 34 of the Idaho Rules of Civil Procedure and IDAPA 37.01.01, Rule 520, and hereby requests that each Protestant separately produce the following documents in response to the following Requests within 15 days:

REQUEST NO. 1: Please produce a copy of all documents referred to in your Answers to Interrogatories.

REQUEST NO. 2: Please produce a copy of all exhibits you intend to present at the protest hearing on this matter.

REQUEST NO. 3: Please produce all reports of experts related to the subject Applications
and/or your objections or protests thereto.

DATED this 9th day of September, 2003.

RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED

By 
for. RANDALL C. BUDGE
Attorney for Applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of September, 2003, I mailed a true and complete copy of the foregoing document, postage prepaid, to the following:

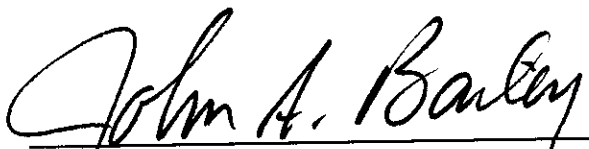
PacifiCorp
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P.O. Box 25456 Denver Federal Center
Denver, Colorado 80225-0286

Bear Lake Watch
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Fish Haven, Idaho 83287

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c/o Glenn Rich
5473 U.S. Highway 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287


for RANDALL C. BUDGE

Randall C. Budge
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109
Attorneys for Applicant
Sam's Hollow Water Company

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO. 11-07491 IN THE)	APPLICANT'S REQUESTS
NAME OF SAM'S HOLLOW WATER)	FOR ADMISSION TO
COMPANY)	PROTESTANTS
_____)	

TO: PACIFICORP AND ITS ATTORNEY JODY WILLIAMS;
U.S. FISH & WILDLIFE SERVICE AND ITS ATTORNEY CHERYL C. WILLISS;
LEON V. HOWELL;
ST. CHARLES IRRIGATION COMPANY IN CARE OF GLENN RICH, PRESIDENT;
BEAR LAKE WATCH, INC., IN CARE OF DAVID COTTLE, PRESIDENT.

COMES NOW Applicant, by and through counsel, pursuant to Rule 36 of the Idaho Rules of Civil Procedure and IDAPA 37.01.01, Rule 520, and hereby requests that each Protestant separately admit or deny each of the following Requests for Admission within 15 days, in writing, signed and under oath. In accordance with Rule 36(a), each Request shall be admitted unless, within 15 days after service of the Request, the parties to whom the Request is directed serves upon the requesting party a written answer or objection, signed under oath.

REQUEST FOR ADMISSION NO. 1: Admit that the proposed use by Applicant will not reduce the quantity of water under existing water rights.

REQUEST FOR ADMISSION NO. 2: Admit that the proposed water supply is sufficient for the purpose intended by Applicant.

REQUEST FOR ADMISSION NO. 3: Admit that the Applicant's Applications are made in good faith and not for delay or speculative purposes.

REQUEST FOR ADMISSION NO. 4: Admit that the Applicant has sufficient financial resources with which to complete the project.

REQUEST FOR ADMISSION NO. 5: Admit that the proposed use as described in the Applications does not conflict with the local public interests.

REQUEST FOR ADMISSION NO. 6: Admit that the proposed use is not contrary to the conservation of water resources within the State of Idaho.

DATED this 9th day of September, 2003.

RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED

By John A. Bailey
For: RANDALL C. BUDGE
Attorney for Applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th of September, 2003, I mailed a true and complete copy of the foregoing document, postage prepaid, to the following:

PacifiCorp
c/o Jody Williams
Holme, Roberts & Owen
299 S. Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

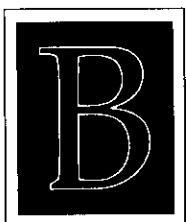
Cheryl S. Williss, Chief
Division of Water Resources
U.S. Fish & Wildlife Service
P.O. Box 25456 Denver Federal Center
Denver, Colorado 80225-0286

Bear Lake Watch
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P.O. Box 205
Fish Haven, Idaho 83287

St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. Highway 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287

A handwritten signature in black ink, reading "John A. Bailey", is written over a horizontal line.



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

RECEIVED

SEP 12 2003

Department of Water Resources

September 5, 2003

RECEIVED

SEP 08 2003

Department of Water Resources
Eastern Region

Mr. Roger Warner
Idaho Department of Water Resources
900 North Skyline Drive
Idaho Falls, ID 83402

Subject: Revised Narratives in Support of Applications for Permits
Sam's Hollow Water Company Bear Lake County
Application No's 11-07481 (Phase 1), 11-07491(Phase 2)

Dear Roger:

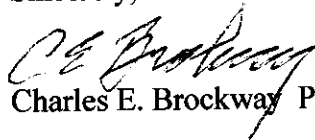
Previous correspondence regarding the two pending permits for Sam's Hollow Water Company have been directed to Harold (Skip) Jones. I am told that you are taking over some of Skip's duties so I am directing this to you.

A typographical error was found in the Narratives in Support of Applications for Phase 1 and Phase 2 of the project. I have corrected the errors in both of the narratives and am enclosing them for inclusion in your file.

Specifically, the narrative for Phase 1 should show a total project depletion of 27.1 af/year instead of 21.7 af/year. Likewise, the narrative for Phase 2 repeats the error and should show the Phase 1 depletion of 27.1 af/year and a total project depletion (Phase 1 and Phase 2) of 68.2 af/year.

We are hopeful that the concerns of PacifiCorp and other protestants can be satisfied shortly and that the scheduled hearing for these applications will not be necessary. However, we are preparing for the hearing in case this does not happen.

Sincerely,


Charles E. Brockway P.E., Ph.D.

Enclosures

cc: Con Gerdes-Johnson Development
Randy Budge
Robert Hill
Jody Williams, PacifiCorp

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506

Charles E. Brockway

From: Charles E. Brockway [cebrock@mindspring.com]
Sent: Friday, August 29, 2003 1:08 PM
To: Bob Hill
Cc: Randy Budge; Con Gerdes; Jody Williams
Subject: Sam's Hollow Water Company Applications

Bob: Thank you for looking over the mitigation plans for Sam's Hollow (Fish Haven) and your e-mail of August 4, 2003.

The Phase 1 Occupancy and Depletion file which you reviewed showed a depletion of 31.7 af/yr. This analysis was subsequently revised when the Kearn property was removed from Phase I. This resulted in a decrease in the number of residential lots (63 to 36) on Phase 1 and decreases in both in-house use and irrigated area. The final revised Phase 1 depletion analysis which was submitted with the amended application to IDWR shows 27.1 acre feet depletion. I am attaching Excel files for both the original Occupancy and Depletion analysis and the revised analysis without the Kearn property for Phase 1 and the Occupancy and Depletion analysis for Phase 2.

There is a typographical error in the narrative for Phase 1 as you pointed out. The depletion shown as 21.7 af should be 27.1 af and the combined total depletion for Phase 1 and Phase 2 should be 68.2 af/year as you pointed out. The required mitigation flow rates for return to Bear Lake as shown in the narratives are correct. I am attaching files showing the corrected narratives for Phase 1 and Phase 2. These amended narratives will also be submitted to IDWR.

You indicated that you were still discussing whether the amount of mitigation water delivered to Bear Lake should be the calculated depletion or the diversion associated with the depletion minus any estimated return flow. My understanding from affidavits of former irrigators of the farm is that any runoff from the surface irrigated areas has historically not returned to the lake but has infiltrated west of the highway. The depletion analysis estimates the total depletion from all proposed project facilities based on current and planned operations and then calculates a reduction of irrigated area on the project(s) to mitigate for the total depletion (water lost to the system). For instance, on Phase 1, the total depletion from all sources with the project is 27.1 ac-ft per year. It is proposed to dry up 22.9 acres of currently irrigated pasture with an annual depletion of 1.18 ac-ft/acre/year to assure that total depletion will not occur. The water historically applied to these 22.9 acres will not be applied to those specific acres and the depletion (loss to the system) from Et will not occur. The water historically applied to those acres will continue to be diverted from Fish Haven Creek into the distribution system (as per Fish Haven Water Users requirement). Since the total irrigated area will be reduced by 22.9 acres, any water from Fish Haven Creek in excess of the depletion from those 22.9 acres will not be lost and may infiltrate to the aquifer and return to Bear Lake or may return to the Lake through the proposed surface return system. In any case, if the project returns at least the depletion volume (27.1 ac-ft) the impact of the project has been fully mitigated. The proposal is therefore to return directly to Bear Lake, a volume equal to or greater than the depletion from the project.

I understand that as soon as you and I have a meeting of the minds relative to your concerns as expressed in your August 4 e-mail that PacifiCorp will withdraw their protest. Since we are rapidly approaching the date for the scheduled hearing, I hope that you will be able to respond as soon as possible.

Thanks for your efforts.

Chuck

Narrative in Support of Application for Permit
Sam' Hollow Water Company Phase I
Revised April 29, 2002

Bear Lake County

This narrative is being revised to reflect changes in the service area for the proposed project which reduces the number of residential lots from 63 to 36. The commercial area and condominium units will remain the same. The calculation of depletions to the Bear River and Bear Lake is based on procedures developed by Robert Hill and outlined in papers on "Procedures for Estimating Depletion of Municipal, Dairy, and Agricultural Crop Water Use in the Lower Bear River Basin In Idaho" presented in 1997 and 1998.

Sam's Hollow Water Company is organized to own and operate a central water system and manage water and water rights for Members of the Corporation. The ultimate service area of the Company will include two phases of subdivision development. In Phase 1, the Company will supply domestic and irrigation water from two or more wells in Sections 11 and 15 T16S R43E B.M. near Fish Haven in Bear Lake County, Idaho. Sam's Hollow Water Company is an Idaho Nonprofit Corporation.

In Phase 1, the Company will serve domestic and irrigation water for 36 residences, 256 condominium units, and 4 commercial enterprises in Phase 1 of the project.

The wells will provide ground water for the system as shown on the enclosed map. Wells No 1 and No 2 were drilled by Johnson Development Co in 2000 and 2001 as test wells to determine the yield of the local aquifer. All water rights pertinent to the water system will be owned by Sam's Hollow Water Company.

Member's of Sams' Hollow Water Company own shares in the Fish Haven Irrigation Company which provides water from Fish Haven Creek for irrigation of lands within the project. It is recognized that groundwater in the aquifer underlying the project is tributary to Bear Lake as is Fish Haven Creek. Additional consumptive use of water from the aquifer by pumping for the project can result in reductions of inflow to Bear Lake.

It is estimated that the total annual diversion from ground water for project use under Phase 1 will equal 136.7 acre feet and the project will irrigate 11.5 acres of turf and landscaping around facilities and buildings.

An estimate of additional depletion of the water resource was made using procedures developed by Dr. Robert Hill. This procedure estimates depletions from home sites and condominiums, commercial development, and irrigation around facilities and accounts for depletions from in-house use, wastewater treatment facilities, and irrigation consumptive use. It is estimated that the total depletion from planned facilities in Phase I of the project will equal 27.1 acre feet per year. To mitigate for additional depletion from ground water by the project, it is proposed to divert the Sam's Hollow Water Company shares of Fish Haven Irrigation Company but return sufficient volume of the diverted water directly to Bear Lake to mitigate for additional consumptive use on the project. Historically, water for project lands has been diverted through three ditches operated by the Fish Haven Water Users, namely the Upper North Ditch, and Ditches #1 and #3.

Sufficient water thus diverted to project lands will be returned by pipeline and/or ditches to Bear Lake and will not be used for irrigation. It is therefor proposed to return 27.1 acre feet of water diverted from Fish Haven Creek during the irrigation season directly to Bear Lake to mitigate for any increased depletion by the project.

A water measurement and monitoring program will be maintained to assure that sufficient irrigation water diverted under Company owned shares in the Fish Haven Irrigation Company does, in fact, reach Bear Lake through pipelines and ditches constructed as part of the project. A pipeline with in-line totalizing flow meter will be installed at the lower end of the project to measure the flow being returned directly to Bear Lake. Reports of volumes of water returned to Bear Lake will be supplied to IDWR and any other interested parties.

Negotiations with the Board of Fish Haven Irrigation Company to allow use of diverted shares for return to Bear Lake to mitigate for increased project consumptive use have been held and they are in agreement with the proposal

Shares of Fish Haven Ditch Company which are owned by members of Sam's Hollow Water Company include 140.5 shares currently owned by Howard Johnson. There are 99.5 shares in the Upper North Ditch, 20 shares in the Number 1 Ditch, and 21 shares in the Number 3 ditch. Based on rotation data supplied by Leon Howell and Harry Michaelson of the Fish Haven Ditch Co., water from these three ditches would be available to the project on a rotation basis with the Upper North Ditch on 12.4 days out of a 31 day rotation period, Number 1 ditch would be on 2.5 days out of a 12.65 day rotation and Number 3 ditch would be on 2.6 days out of a 31.65 day rotation. For a 150 day irrigation season, these three ditches would be on about 60.2, 29.6, and 12.4 days respectively or a total of 102.3 days total when one or more ditches would be delivering water to project lands. To mitigate for the project consumptive use of 27.1 acre feet, an average flow of 0.13 cfs or 6.5 miners inches for the 102.3 days would have to be returned directly to Bear Lake.

Using procedures developed by Robert Hill, mitigation of the 27.1 af of depletion would require that 22.9 acres of historically irrigated land be dried up. This would consist of any irrigated areas within the project upon which structures or roads would be built and other irrigated land taken out of production.

Documentation of the amount of water available to the project through any of the three ditches will require water measurement and accounting of water deliveries throughout the season. Sam's Hollow Water Company will assist in installing additional water measurement and monitoring equipment on ditches diverting from Fish Haven Creek and will install a water measuring and flow totalizing device on the return pipe or ditch to Bear Lake to assure that the required mitigation water does return to the lake. Diversions to project lands under the project's shares will continue as determined by the Board of Fish Haven Water Users and a water accounting program will be implemented by Sam's Hollow Water Company to account for all water mitigation water diverted directly to Bear Lake.

Narrative in Support of Application for Permit
Sam' Hollow Water Company
Bear Lake Haven Phase II

Bear Lake County

Revised April 29, 2002

Sam's Hollow Water Company was organized in 2001 to own and operate a central water system and manage water and water rights for Members of the Corporation. The Company is currently organized to supply domestic and irrigation water from two wells in Sections 11 and 15, T16S, R43E B.M. for Phase I of the Bear Lake Haven Project near Fish Haven in Bear Lake County, Idaho. The Company service area will be expanded to serve additional homes in Phase II of the Project located in Sections 2, 10 and 11, T16S, R43E. Sam's Hollow Water Company is an Idaho Nonprofit Corporation.

The Company currently is scheduled to serve domestic and irrigation water for 36 single family homes, 256 condominiums, and 10,000 sq ft of commercial area in Phase 1 of the project. The common water system for Phase II of the project will serve 241 single-family residences as shown on the accompanying map. Fifteen (15) lots in Phase II will be served by individual wells. The wells on the fifteen lots will be developed by individual lot owners under Sec 42-111a of the Idaho Code and will therefore be exempt from permit requirements.

Two wells, No. 1 and 2, were drilled and tested in the Phase I area in 2000 and 2001 by Johnson Development Co. These were drilled as test wells to determine the yield of the local aquifer and pumping rates of 160 gpm and 580 gpm were obtained. Three additional wells are proposed for Phase II of the project as shown on the attached map. Geologic evidence indicates that the aquifer underlying the Phase 2 lands is similar to that underlying the Phase I land where the two test wells were drilled. It is expected therefore that additional wells necessary for Phase II of the project can be obtained. All water rights pertinent to the water system will be owned by Sam's Hollow Water Company.

Application for Permit No. 11-7481 was submitted by Sam's Hollow Water Company in October 2001 to IDWR for a water right for Phase I of the project. This application included a mitigation plan whereby consumptive depletions to Bear Lake would be mitigated by utilization of surface water rights from Fish Haven Creek, which are applicable to lands of members of the Company. This application for ground water to supply 241 homes in Phase II of the project contemplates similar use of Fish Haven Creek irrigation rights for mitigation.

Member's of Sam's' Hollow Water Company own shares in the Fish Haven Irrigation Company which provides water from Fish Haven Creek for irrigation of lands within the project. It is recognized that groundwater in the aquifer underlying the project is tributary to Bear Lake as is Fish Haven Creek. Additional consumptive use of water from the aquifer by pumping for the project can result in reductions of inflow to Bear Lake.

For Phase II of the Bear Lake Haven Project, it is estimated that the total annual diversion from ground water for project use will equal 197.0 acre feet and that the total annual depletion from irrigation of 27.9 acres of irrigation associated with houses and facilities and domestic in-house use will equal 41.1 acre feet. An estimate of additional depletion of the water resource was made using procedures developed by Dr. Robert Hill. This procedure estimates depletions from home sites and condominiums, commercial development, and irrigation around facilities and accounts for depletions from in-house use, on-site wastewater treatment facilities, and irrigation consumptive use. The total depletion from planned facilities in Phase 2 of the project utilizing the Hill estimating procedure will equal 41.1 acre feet per year.

To mitigate for additional consumptive use of ground water by the project, it is proposed to divert the Sam's Hollow Water Company shares of Fish Haven Irrigation Company but return sufficient volume of the diverted water directly to Bear Lake to mitigate for additional consumptive use on the project. Historically, water for project lands has been diverted through three ditches operated by the Fish Haven Water Users, namely the Upper North Ditch, and Ditches #1 and #3. Sufficient water thus diverted to project lands will be returned by pipeline and/or ditches to Bear Lake and will not be used for irrigation. It is therefore proposed to return 41.1 acre feet of water diverted from Fish Haven Creek during the irrigation season directly to Bear Lake to mitigate for any increased depletion by the project.

A water measurement and monitoring program will be maintained to assure that sufficient irrigation water diverted under Company owned shares in the Fish Haven Irrigation Company does, in fact, reach Bear Lake through pipelines and ditches constructed as part of the project. A pipeline with in-line totalizing flow meter will be installed at the lower end of the project to measure the flow being returned directly to Bear Lake. Reports of volumes of water returned to Bear Lake will be supplied to IDWR and any other interested parties.

Negotiations with the Board of Fish Haven Irrigation Company to allow use of diverted shares for return to Bear Lake to mitigate for increased project consumptive use have been held and they are in agreement with the proposal.

Shares of Fish Haven Ditch Company, which are owned by members of Sam's Hollow Water Company, include 140.5 shares currently owned by Howard Johnson. There are 99.5 shares in the Upper North Ditch, 20 shares in the Number 1 Ditch, and 21 shares in the Number 3 ditch. Based on rotation data supplied by Leon Howell and Harry Michaelson of the Fish Haven Ditch Co., water from these three ditches would be available to the project on a rotation basis with the Upper North Ditch on 12.4 days out of a 31-day rotation period. Number 1 ditch would be on 2.5 days out of a 12.65-day rotation, and Number 3 ditch would be on 2.6 days out of a 31.65-day rotation. For a 150 day irrigation season, these three ditches would be on about 60.2, 29.6, and 12.4 days respectively or a total of 102.3 days total when one or more ditches would be delivering water to project lands. To mitigate for the Phase II project consumptive use of 41.1 acre feet, an average flow of 0.20 cfs or 10 miners inches for the 102.3 days would have to be returned directly to Bear Lake.

Using procedures developed by Robert Hill, mitigation of the 41.1 af of depletion would require that 34.7 acres of historically irrigated land be dried up. This would consist of any irrigated areas within the project upon which structures or roads would be built and other irrigated land taken out of production. The mitigation plan for Phase I of the project required mitigation for ~~21-727.1~~ af/year or an average flow of .13 cfs or 6.5 miners inches for the 102.3 days for which irrigation water is normally available to the Project. The combined Phase I and Phase II mitigation for depletion is therefore 41.1 + ~~21-727.1~~ or ~~62-868.2~~ af/year. An average flow of 0.33 cfs or 16.5 miners inches for the 102.3 days will be required to be returned to Bear Lake.

Documentation of the amount of water available to the project through any of the three ditches will require water measurement and accounting of water deliveries throughout the season. Sam's Hollow Water Company will assist in installing additional water measurement and monitoring equipment on ditches diverting from Fish Haven Creek, and will install a water measuring and flow totalizing device on the return pipe or ditch to Bear Lake to assure that the required mitigation water does return to the lake. Diversions to project lands under the project's shares will continue as determined by the Board of Fish Haven Water Users and a water accounting and reporting program will be implemented by Sam's Hollow Water Company to account for all water mitigation water diverted directly to Bear Lake.

To estimate the affect of the additional wells in the aquifer on water levels and local well interference, observation wells were measured during the pumping tests of wells #1 and #2. A calculation of the drawdown effects of pumping an 8-inch diameter well at estimated maximum-pumping levels was performed.

During the pumping test of well #1 in November 2000, the well was pumped at a maximum rate of 138 gpm with a measured drawdown of approximately 88 feet. Two observation wells were measured during the eight-hour test. Observation well #1 was located in Fish Haven near the condominium complex south of the highway approximately 3382 feet south west of the pumped well. Depth to water was 4' 7" prior to the pumping test and did not change during the eight hours of pumping well #1. Observation well #2 was an unused 8 inch diameter well with a hand pump located 1065.7 feet north east of the pumped well near the intersection of the cemetery road and the highway. Depth to water before the pumping test was 15' 28 1/2". The water level in the well did not change during the pumping test of well #1.

Utilizing the drawdown and discharge data from the pumped wells, a computer program based on the Theis equation was used to estimate drawdown at various distances from a pumped well. This analysis showed the estimated drawdown at distances up to 1000 feet from an 8-inch diameter well pumping continuously at 300 gpm. The design maximum discharge for Phase II is 1.22 cfs (547 gpm) pumping from two or three wells.

The drawdown from a well pumping 300 gpm continuously for 50 days would be 1.84 feet at a distance of 1000 feet from the well. This estimate is conservative since the production wells will not pump continuously but will cycle on and off depending on the demand. A more likely scenario is that an individual well would pump one half the average daily domestic demand plus the irrigation demand of 200 gpm for 24 to 48 hours.

In which case, the drawdown caused by the pumped well would be imperceptible at 500 feet from the well.

The aquifer yield for both Phase I and Phase II is more than adequate to supply the domestic and irrigation demands of the project and local well interference will not be significant. Planned locations for wells in Phase II and Phase I are more than 1000 feet from any domestic or municipal wells.

DEPLETION ANALYSIS FOR PHASE I SAM'S HOLLOW WATER COMPANY

Rev. 1/30/2002

Using "Procedures for Estimating Depletion of Municipal, Dairy, and Agricultural Crop Water Use in the Lower Bear River Basin in Idaho" by Robert W. Hill P.E.

Paper presented at Public Hearings July 2, 1997 in Preston and Soda Springs, ID and supplemented with 1998 paper

Calcs for Sam's Hollow Water Company by Brockway Engineering, PLLC Jan. 29, 2002
Based on precip., Consumptive Use, and Depletion for Bear Lake County, ID by R. Hill

DOMESTIC POTABLE WATER - Home Sites

Potable(culinary) water supplied from municipal system

Wastewater treatment by on-site systems (septic tank/drainfield-non consumptive)

No. of lots	63	municipal water & Individual on-site sewage		
Average occupancy	4	persons		
Average daily diversion demand - potable	100	gpcd		
Average daily demand-potable/connection	400	gpd	Utah avg day design vol.	
Daily Home Site volume	25,200	gpd		
Average annual percent occupancy	40.2	%		
Annual volume used	3,694,320	gal =	11.34	ac-ft
Percent depletion of culinary water-in house	5	percent		
Annual volume of culinary water in-house depletion	184716	gal =	0.57	ac-ft
Wastewater from culinary in-house water use(to drain field)	3,509,604			
Est. percent depletion from drain field treatment**	10	%		
Volume of depletion from wastewater disposal(drainfields)	369432	gal =	1.13	ac-ft
Annual vol.depletion of culinary water-Homesites	554148	gal =	1.70	ac-ft

C.E. Brockway P.E. Brockway Engineering P.L.L.C.

DOMESTIC POTABLE WATER - Condominium

Potable(culinary) water supplied from municipal system

Wastewater treatment in regional system (lagoons)

Number of Buildings	64			
No. of Units	256			
Average occupancy	4	persons		
Average daily demand - potable	70	gpcd	Utah avg day	
Average daily demand-potable/unit	280	gpd		
Avg. Daily Condominium volume	71,680	gpd		
Average annual percent occupancy	40.2	%		
Annual volume used	10,508,288	gal =	32.25	ac-ft
Percent depletion of culinary water-in-house	5	percent		
Annual In-house depletion of culinary water-	525414.4	gal=	1.61	ac-ft
Wastewater to regional sewer system-lagoons***	9,982,874	gal=	30.64	ac-ft
Percent of wastewater to lagoon evaporated	30	percent		
Annual wastewater evaporated	2994862	gal=	9.19	ac-ft
Annual vol.depletion of culinary water-Condominiums	3520276.5	gal=	10.80	ac-ft

POTABLE WATER - Commercial

Potable water supplied by municipal system

Wastewater treatment in regional system (lagoons)

Estimated Amount of Commercial Footage

GPD per 1,000 sq ft of Commercial Use

Average daily volume demand

Average annual percent occupancy

Annual volume*

Percent depletion of culinary water-in-house

Annual In-house depletion of culinary water-

Wastewater to regional sewer system-lagoons***

Percent of wastewater to lagoon evaporated

Annual wastewater evaporated

10,000	sq ft		
250	gpd/1,000 sq ft		
2,500	gpd		
100	%		
912,500	gal =	2.80	ac-ft
	5 percent		
45625	gal=	0.14	ac-ft
866,875	gal=	2.66	ac-ft
	30 percent		
260063	gal=	0.80	ac-ft
Annual vol.depletion of culinary water-Commercial	305687.5 gal=	0.94	ac-ft

IRRIGATION

Irrigation water delivered by municipal system

$Dpl = Et - SMco - Pef$ Dpl=depletion, Et=crop water use, Smco=soil moisture carryover

Pef=Effective precipitation(May-September)

Crop water use (Et)and Effective Precipitation(Pef) for Soda Springs, ID from R. Hill, 1997

Irrigated Area per lot

Irrigated area per condominium bldg

Total irrigated area

Depletion (Sprinkler-Turf Grass)**

5000	ft^2		
5000	ft^2		
14.6	acres		
15.00	inches (Bear Lake County)	Hill 1998	
Annual vol. Depletion from Irrigation	18.22	ac-ft	

Annual Project Depletion

Culinary-Homesites	1.7	
Culinary-Condominiums	10.8	
Commercial	0.94	
Irrigation	18.22	
Total Annual Project Depletion	31.7	ac-ft

Equivalent Acreage for Project Consumptive Use

Depletion for pasture grass**

14.20 inches (Bear Lake County) Hill 1998

or

1.18 af/year

Project Total Annual Depletion

31.7 acre feet

Equivalent Irrigated Acreage

26.8 acres

** Includes carry-over soil moisture and adjustment for non-growing season Et (Hill, 1998, personal comm.)

*** Regional sewer system includes lagoons with outflow to wetlands and Bear Lake

* Depletion from on-site sewage disposal assumes some effluent may reach ground surface and contribute to vegetation Et or evaporation

DEPLETION ANALYSIS FOR PHASE I SAM'S HOLLOW WATER COMPANY

Rev. 1/30/2002

Using "Procedures for Estimating Depletion of Municipal, Dairy, and Agricultural Crop Water Use in the Lower Bear River Basin in Idaho" by Robert W. Hill P.E.

Paper presented at Public Hearings July 2, 1997 in Preston and Soda Springs, ID and supplemented with 1998 paper

Calcs for Sam's Hollow Water Company by Brockway Engineering, PLLC Jan. 29, 2002
Based on precip., Consumptive Use, and Depletion for Bear Lake County, ID by R. Hill

DOMESTIC POTABLE WATER - Home Sites

Without Kearsley Property

Potable(culinary) water supplied from municipal system

Wastewater treatment by on-site systems (septic tank/drainfield-non consumptive)

No. of lots	36	municipal water & Individual on-site sewage		
Average occupancy	4	persons		
Average daily diversion demand - potable	100	gpcd		
Average daily demand-potable/connection	400	gpd	Utah avg day design vol.	
Daily Home Site volume	14,400	gpd		
Average annual percent occupancy	40.2	%		
Annual volume used	2,111,040	gal =	6.48	ac-ft
Percent depletion of culinary water-in-house	5	percent		
Annual volume of culinary water in-house depletion	105552	gal =	0.32	ac-ft
Wastewater from culinary in-house water use(to drain field)	2,005,488			
Est. percent depletion from drain field treatment**	10	%		
Volume of depletion from wastewater disposal(drainfields)	211104	gal =	0.65	ac-ft

Annual vol.depletion of culinary water-Homesites

316656 gal = 0.97 ac-ft

C.E. Brockway P.E. Brockway Engineering P.L.L.C.

DOMESTIC POTABLE WATER - Condominium

Potable(culinary) water supplied from municipal system

Wastewater treatment in regional system (lagoons)

Number of Buildings	64			
No. of Units	256			
Average occupancy	4	persons		
Average daily demand - potable	70	gpcd	Utah avg day	
Average daily demand-potable/unit	280	gpd		
Avg. Daily Condominium volume	71,680	gpd		
Average annual percent occupancy	40.2	%		
Annual volume used	10,508,288	gal =	32.25	ac-ft
Percent depletion of culinary water-in-house	5	percent		
Annual In-house depletion of culinary water-	525414.4	gal=	1.61	ac-ft
Wastewater to regional sewer system-lagoons***	9,982,874	gal=	30.64	ac-ft
Percent of wastewater to lagoon evaporated	30	percent		
Annual wastewater evaporated	2994862	gal=	9.19	ac-ft

Annual vol.depletion of culinary water-Condominiums

3520276.5 gal= 10.80 ac-ft

POTABLE WATER - Commercial

Potable water supplied by municipal system

Wastewater treatment in regional system (lagoons)

Estimated Amount of Commercial Footage

GPD per 1,000 sq ft of Commercial Use

Average daily volume demand

Average annual percent occupancy

Annual volume*

Percent depletion of culinary water-in-house

Annual In-house depletion of culinary water-

Wastewater to regional sewer system-lagoons***

Percent of wastewater to lagoon evaporated

Annual wastewater evaporated

10,000	sq ft		
250	gpd/1,000 sq ft		
2,500	gpd		
100	%		
912,500	gal =	2.80	ac-ft
	5 percent		
45625	gal=	0.14	ac-ft
866,875	gal=	2.66	ac-ft
	30 percent		
260063	gal=	0.80	ac-ft
Annual vol.depletion of culinary water-Commercial	305687.5 gal=	0.94	ac-ft

IRRIGATION

Irrigation water delivered by municipal system

Dpl=Et - SMco - Pef Dpl=depletion, Et=crop water use, Smco=soil moisture carryover

Pef=Effective precipitation(May-September)

Crop water use (Et)and Effective Precipitation(Pef) for Soda Springs, ID from R. Hill, 1997

Irrigated Area per lot

Irrigated area per condominium bldg

Total irrigated area

Depletion (Sprinkler-Turf Grass)**

5000	ft^2		
5000	ft^2		
11.5	acres		
15.00	inches (Bear Lake County)	Hill 1998	
Annual vol. Depletion from Irrigation	14.35	ac-ft	

Annual Project Depletion

Culinary-Homesites	1.0	
Culinary-Condominiums	10.8	
Commercial	0.94	
Irrigation	14.35	
Total Annual Project Depletion	27.1	ac-ft

Equivalent Acreage for Project Consumptive Use

Depletion for pasture grass**

or

14.20 inches (Bear Lake County)	Hill 1998
1.18 af/year	
27.1 acre feet	
22.9 acres	

Project Total Annual Depletion

Equivalent Irrigated Acreage

** Includes carry-over soil moisture and adjustment for non-growing season Et (Hill, 1998, personal comm.)

*** Regional sewer system includes lagoons with outflow to wetlands and Bear Lake

* Depletion from on-site sewage disposal assumes some effluent may reach ground surface and contribute to vegetation Et or evaporation

DEPLETION ANALYSIS FOR PHASE 2 SAM'S HOLLOW WATER COMPANY

1/30/02

Using "Procedures for Estimating Depletion of Municipal, Dairy, and Agricultural Crop Water Use in the Lower Bear River Basin in Idaho" by Robert W. Hill P.E.

Paper presented at Public Hearings July 2, 1997 in Preston and Soda Springs, ID and supplemented with 1998 paper

Calcs for Bear Lake Haven Subdivision by Brockway Engineering, PLLC Jan. 30, 2002
Based on precip., Consumptive Use, and Depletion for Bear Lake County, ID by R. Hill

DOMESTIC POTABLE WATER - Home Sites

Potable(culinary) water supplied from municipal system

Wastewater treatment by on-site systems (septic tank/drainfield-non consumptive)

No. of lots	241	municipal water & Individual on-site sewage		
Average occupancy	4	persons		
Average daily diversion demand - potable	100	gpcd		
Average daily demand-potable/connection	400	gpd	Utah avg day design vol.	
Daily Home Site volume	96,400	gpd		
Average annual percent occupancy	40.2	%		
Annual volume used	14,132,240	gal =	43.37	ac-ft
Percent depletion of culinary water-in house	5	percent		
Annual volume of culinary water in-house depletion	706612	gal =	2.17	ac-ft
Wastewater from culinary in-house water use(to drain field)	13,425,628			
Est. percent depletion from drain field treatment**	10	%		
Volume of depletion from wastewater disposal(drainfields)	1413224	gal =	4.34	ac-ft
Annual vol.depletion of culinary water-Homesites	2119836	gal =	6.51	ac-ft
C.E. Brockway P.E. Brockway Engineering P.L.L.C.				

DOMESTIC POTABLE WATER - Condominium

No Condominiums in Phase 2

Potable(culinary) water supplied from municipal system

Wastewater treatment in regional system (lagoons)

Number of Buildings	0			
No. of Units	0			
Average occupancy	4	persons		
Average daily demand - potable	70	gpcd	Utah avg day	
Average daily demand-potable/unit	280	gpd		
Avg. Daily Condominium volume	0	gpd		
Average annual percent occupancy	40.2	%		
Annual volume used	0	gal =	0.00	ac-ft
Percent depletion of culinary water-in-house	5	percent		
Annual In-house depletion of culinary water-	0	gal=	0.00	ac-ft
Wastewater to regional sewer system-lagoons***	0	gal=	0.00	ac-ft
Percent of wastewater to lagoon evaporated	30	percent		
Annual wastewater evaporated	0	gal=	0.00	ac-ft
Annual vol.depletion of culinary water-Condominiums	0	gal=	0.00	ac-ft

POTABLE WATER - Commercial

No Commercial in Phase 2

Potable water supplied by municipal system				
Wastewater treatment in regional system (lagoons)				
Estimated Amount of Commercial Footage	0	sq ft		
GPD per 1,000 sq ft of Commercial Use	250	gpd/1,000 sq ft		
Average daily volume demand	0	gpd		
Average annual percent occupancy	100	%		
Annual volume*	0	gal =	0.00	ac-ft
Percent depletion of culinary water-in-house		5 percent		
Annual In-house depletion of culinary water-	0	gal=	0.00	ac-ft
Wastewater to regional sewer system-lagoons***	0	gal=	0.00	ac-ft
Percent of wastewater to lagoon evaporated	30	percent		
Annual wastewater evaporated	0	gal=	0.00	ac-ft
Annual vol.depletion of culinary water-Commercial		0 gal=	0.00	ac-ft

IRRIGATION

Irrigation water delivered by municipal system				
Dpl=Et - SMco - Pef Dpl=depletion, Et=crop water use, Smco=soil moisture carryover Pef=Effective precipitation(May-September)				
Crop water use (Et)and Effective Precipitation(Pef) for Soda Springs, ID from R. Hill, 1997				
Irrigated Area per lot	5000	ft^2		
Irrigated area per condominium bldg	5000	ft^2		
Total irrigated area	27.7	acres		
Depletion (Sprinkler-Turf Grass)**	15.00	inches (Bear Lake County)	Hill 1998	
Annual vol. Depletion from Irrigation	34.58	ac-ft		
Annual Project Depletion				
Culinary-Homesites	6.5			
Culinary-Condominiums	0.0			
Commercial	0.00			
Irrigation	34.58			
Total Annual Project Depletion	41.1	ac-ft		

Equivalent Acreage for Project Consumptive Use

Depletion for pasture grass**	14.20 inches (Bear Lake County)	Hill 1998
	or	1.18 af/year
Project Total Annual Depletion	41.1	acre feet
Equivalent Irrigated Acreage	34.7	acres

** Includes carry-over soil moisture and adjustment for non-growing season Et (Hill, 1998, personal comm.)

*** Regional sewer system includes lagoons with outflow to wetlands and Bear Lake

* Depletion from on-site sewage disposal assumes some effluent may reach ground surface and contribute to vegetation Et or evaporation

FISH HAVEN WATER USERS COMPANY
Fish Haven, Idaho 83287

RECEIVED

SEP 04 2003

Department of Water Resources
Eastern Region

August 27, 2003

Department of Water Resources
Eastern Region
900 North Skyline Drive, Suite A
Idaho Falls, ID 83401-1718

Attn Harold W Jones

Dear Sirs:

As you are aware, the Fish Haven Water Users Company, Inc. has several water measuring devices for the five ditches comprising our irrigation water delivery system. The five ditches are designated as No. 2 and Upper South (delivering water south of the Fish Haven Canyon Lane) and No. 1, No. 3, and Upper North (delivering water north of the Fish Haven Canyon Lane).

During an early August meeting with representatives of Sam's Hollow Water Users Company and Utah Power, Leon Howell, a director and the secretary for the Fish Haven Water Users Company, discussed the water flumes provided by Sam's Hollow Water Users Company. Measuring devices are in place in No. 1 and Upper North. Sam's Hollow delivered flumes for the three remaining ditches but the directors believed them to be too small for the system and requested larger flumes. Nevertheless, Dr. Brockway asked that the flumes be installed to "try them out." Thereafter, the flume for No. 2 was replaced as originally requested. The flumes for Upper South and No. 3 remain unsatisfactory. Upper South ditch should accommodate 7.52 cfs but the flume in that ditch is undersized to handle that amount of water. The flume in No. 3 is also too small and seepage occurs below the ditch because the water backs up as it reaches the measuring device.

By a copy of this letter to their attorney, Mr. Randy Budge, we hereby request that Sam's Hollow Water Users Company provide measuring devices sized at no less than 24 inches to service No. 3 and Upper South.

If there are any questions concerning these matters, please contact the undersigned at 208-945-2352. Thank you for your assistance.

Very truly yours,

FISH HAVEN WATER USERS COMPANY

By *Leon V. Howell*
Leon V. Howell, Secretary

LVH:khi

cc: Randall Budge, Esq.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

**IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 11-07491 IN THE)
NAME OF SAM'S HOLLOW WATER CO)**

**NOTICE OF
HEARING**

On January 11, 2002, Sam's Hollow Water Company filed Application 11-077491. The application was protested on May 12, 2002 by PacifiCorp, Leon Howell, St Charles Irrigation Company, Bear Lake Watch, Inc, and a Letter of Concern filed by Bear River Water Users' Association.

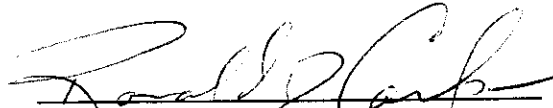
**THE DEPARTMENT HAS NOW SCHEDULED THE MATTER FOR
HEARING ON OCTOBER 8 AND 9, 2003, AT 9:30 A.M., AT THE BEAR
LAKE SENIOR CITIZENS INC, 300 HOSPITAL PLZ, MONTPELIER ID.**

The hearing will be held in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources. A copy of the rules may be obtained from the Department upon request. The presiding officer at the hearing will be Gary Spackman.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten (10) days prior to the hearing.

Dated this 29th day of July, 2003.



RONALD D. CARLSON
Regional Manager

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2003, I mailed a true and correct copy, postage prepaid, of foregoing **NOTICE OF HEARING** to the following:

Racine Olson Nye Budge & Bailey
Randall Budge
C/O Sam's Hollow Water Company
PO Box 1391
Pocatello ID 83204-1391

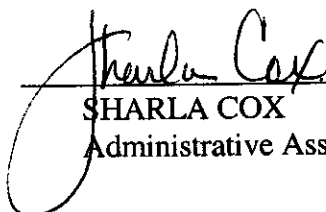
Clyde Snow Sessions & Swenson
C/O Bear River Water Users' Association
201 S Main St
Salt Lake City UT 84111-2216

David Cottle
C/O Bear Lake Watch Inc
PO Box 205
Fish Haven ID 83287

St Charles Irrigation Company
C/O Glenn Rich
5473 US 89
St Charles ID 83272

Leon Howell
Box 117
Fish Haven ID 83287

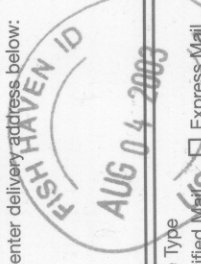
Jody L Williams
Holme Roberts & Owen LLP
C/O PacifiCorp
200 S Main St Ste 1800
Salt Lake City UT 84111-2263


SHARLA COX
Administrative Assistant

CERTIFICATE OF SERVICE

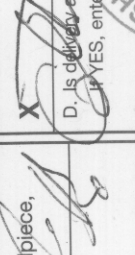
SENDER: COMPLETE THIS SECTION ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		COMPLETE THIS SECTION ON DELIVERY A. Received by (Please Print Clearly) KIM DOKOS B. Date of Delivery AUG 1 C. Signature X Kim Dokos ☐ Agent ☐ Addressee D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
1. Article Addressed to: CLYDE SNOW SESSIONS & SWENSON C/O BEAR RIVER WATER USERS 201 S MAIN ST SALT LAKE CITY UT 84111-2216		☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number (Copy from service label) 7001 2510 0007 6760 4088		Domestic Return Receipt PS Form 3811, July 1999	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
1. Article Addressed to: JODY L WILLIAMS HOLME ROBERTS & OWEN C/O PACIFICORP 200 S MAIN ST STE 1800 SALT LAKE CITY UT 84111-2263		A. Received by (Please Print Clearly) Laura Floyd	
2. Article Number (Copy from service label) 7001 2510 0007 6760 4040		B. Date of Delivery 1 AUG 2003	
3. Service Type ☒ Certified Mail ☐ Registered ☐ Insured Mail ☐ Express Mail ☐ Return Receipt for Merchandise ☐ C.O.D.		C. Signature Laura Floyd	
4. Restricted Delivery? (Extra Fee) ☐ Yes		D. Is delivery address different from item 1? ☐ Yes ☐ No	

FR: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
1. Article Addressed to: LEON HOWELL BOX 117 FISH HAVEN ID 83287	2. Article Number (Copy from service label) 7001 2510 0007 6760 4057
complete items 1, 2, and 3. Also complete in 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.	3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes
5. Signature: <i>Leon Howell</i> 6. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
	
7. Date of Delivery: 8/4/03 8. Agent Addressed: ☐ Agent ☐ Addressee	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Received by (Please Print Clearly) B. Date Gail Rich C. Signature ☐ Agent ☐ Addressee X Gail M. Rich D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:
ST CHARLES IRRIGATION CO C/O GLENN RICH 5473 US 89 ST CHARLES ID 83272	3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes
2. Article Number (Copy from service label) 	
PS Form 3811, July 1999 Domestic Return Receipt	

COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
1. Article Addressed to: RACINE OLSON NYE BUDGE & BAILEY RANDALL BUDGE PO BOX 1391 POCATELLO ID 83204-1391	A. Received by (Please Print Clearly) <u>Shannon Hancock</u> C. Signature <u>x Shannon Hancock</u> B. Date of Delivery <u>AUG 05 2003</u> Agent Addressee ☒ Agent ☐ Addressee D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☒ No
2. Article Number (Copy from service label) 7001 2510 0007 6760 4095	3. Service Type ☒ Certified Mail ☐ Registered ☐ Insured Mail ☐ Express Mail ☐ Return Receipt for Merchandise ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes
PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY								
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: DAVID COTTLE C/O BEAR LAKE WATCH INC PO BOX 205 FISH HAVEN ID 83287	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-bottom: 1px solid black; padding: 5px;"> A. Received by (Please Print Clearly) </td> <td style="width: 50%; border-bottom: 1px solid black; padding: 5px;"> B. Date of Delivery </td> </tr> <tr> <td style="border-bottom: 1px solid black; padding: 5px;"> C. Signature <i>[Signature]</i> </td> <td style="border-bottom: 1px solid black; padding: 5px;"> ☐ Agent ☐ Addressee </td> </tr> <tr> <td colspan="2" style="padding: 5px;"> D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below: </td> </tr> </table>  <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-bottom: 1px solid black; padding: 5px;"> 3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. </td> <td style="width: 50%; border-bottom: 1px solid black; padding: 5px;"> 4. Restricted Delivery? (Extra Fee) ☐ Yes </td> </tr> </table>	A. Received by (Please Print Clearly)	B. Date of Delivery	C. Signature <i>[Signature]</i>	☐ Agent ☐ Addressee	D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	4. Restricted Delivery? (Extra Fee) ☐ Yes
A. Received by (Please Print Clearly)	B. Date of Delivery								
C. Signature <i>[Signature]</i>	☐ Agent ☐ Addressee								
D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:									
3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	4. Restricted Delivery? (Extra Fee) ☐ Yes								
2. Article Number (Copy from service label)	7001 2510 0007 6760 4071								
PS Form 3811, July 1999									

UNITED STATES POSTAL SERVICE

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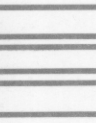
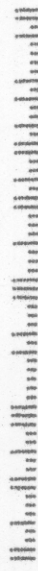
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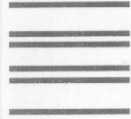
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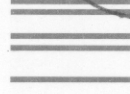
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ATTN: 11-7491

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June 30, 2003

Ronald D. Carlson
Eastern Region Manager
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

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Department of Water Resources
Eastern Region

**PETITION FOR RECONSIDERATION OF
PRELIMINARY ORDER DATED JUNE 26, 2003
SAM'S HOLLOW WATER COMPANY
APPLICATION FOR PERMIT NUMBER 11-07481 (PHASE I)
APPLICATION FOR PERMIT NUMBER 11-07491 (PHASE II)**

Dear Mr. Carlson:

On behalf of the Applicant Sam's Hollow Water Company, please consider this a Petition for Reconsideration of the Preliminary Order issued June 26, 2003, rejecting Application No. 11-07481 (Phase I) for the reason that the Applicant allegedly did not respond to the Department's April 17, 2003 letter "providing the opportunity for the Applicant to submit a mitigation plan that would allow the Department to further consider the pending Application." I respectfully request that the Department immediately withdraw the Preliminary Order, as it appears to have been entered by mistaken or inadvertence.

Application for Permit No. 11-07481 pertains to Phase I of the Sam's Hollow Development Project located near Fish Haven, Idaho, and Application for Permit No. 11-07491 pertains to Phase II of the same project. A Mitigation Plan was previously submitted with each of these Applications at the time they were filed and is presently under consideration by the Department. I have had numerous communications with Harold Jones regarding both of these Applications, both before and after the April

Ronald D. Carlson
June 30, 2003
Page 2

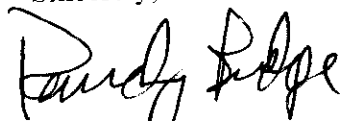
17, 2003 letter, and there is no misunderstanding that the Applicant is proceeding with both Applications. In fact, your file should contain copies of a number of recent letters that I have sent out concerning these Applications.

A number of protests have been filed to both Applications, which are pending. A hearing was originally scheduled in May on Application No. 11-07481. Because Application No. 11-07491 was in the process of being published in May, pertained to the same development and was expected to be protested by the same protestants, the May hearing was continued and both Applications were combined for hearing purposes. Since that time there have been numerous and ongoing communications with the protestants as well as the Department. In fact, an on-site meeting with review of the Mitigation Plan and inspection of the project and mitigation facilities is scheduled at Fish Haven on July 10 at 10:30 a.m. This involves all the protestants, representatives from the Applicant and the hydrologist. The hydrologist for the Applicant, Chuck Brockway, will be there, along with PacifiCorp's hydrologist, Bob Hill, for the primary purposes of reviewing and going over the Mitigation Plan. These Applications are the first presented for approval since the Director established the Bear River Ground Water Management Area on August 12, 2001, and adopted the Ground Water Management Plan on February 25, 2003, for the Bear River drainage.

The Applicant did not send a specific letter responding to Harold Jones' April 13, 2003 letter, as the Applicant Sam's Hollow understood that letter to be a standard form letter being sent out to all pending applications and that further response was not necessary because Mitigation Plans had been submitted previously with both of these Applications, because proceedings were pending before the Department on the various protests, and because Mr. Jones was well aware of these things and that the Applicant fully intended to proceed with the Applications.

I trust the foregoing is sufficient explanation to permit the Preliminary Order to be withdrawn. If there are any questions or additional information needed, please contact me.

Sincerely,



RANDALL C. BUDGE

RCB:rr

cc: Sam's Hollow Water Company (w/encl.)
Charles Brockway (w/encl.)

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Department of Water Resources
Eastern Region

June 19, 2003

Dave Cottle, President
Bear Lake Watch
P.O. Box 205
Fish Haven, Idaho 83287

St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. 89
St. Charles, Idaho 83272

Bill Stock, President
Fish Haven Water Users
P.O. Box 127
Fish Haven, Idaho 83287

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287

Re: *Sam's Hollow Water Company*
Application for Permit No. 11-7481 (Phase I)
Application for Permit No. 11-7491 (Phase II)

Dear Dave, Leon, Glenn and Bill:

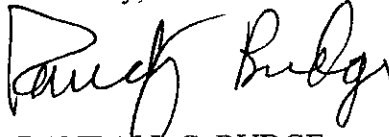
The on-site inspection of the Sam's Hollow project, proposed wells and Mitigation Plan, and the Fish Haven Creek irrigation system to be used for mitigation has now been rescheduled from July 1 to July 10 at 10:30 a.m. The plan is to meet at the Bear Lake Regional Commission Office in Fish Haven, where an overview will be provided, following which the Fish Haven Water Users Association system and the Sam's Hollow Development will be inspected.

June 19, 2003

Page 2

Other interested parties have been notified by e-mail of this reschedule. If you know of others that desire to attend this meeting, please notify them of the above. Thanks.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall C. Budge". The signature is stylized with a large initial "R" and a long, sweeping underline.

RANDALL C. BUDGE

RCB:rr

cc: Harold W. Jones/Supervisor/IDWR

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June 18, 2003

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Department of Water Resources
Eastern Region

D. Brent Rose
Clyde Snow Sessions & Swenson
One Utah Center, Thirteenth Floor
201 S. Main Street
Salt Lake City, Utah 84111-2216

Re: *Sam's Hollow Water Company*
Application for Permit No. 11-7481 (Phase I)
Application for Permit No. 11-7491 (Phase II)

Dear Brent:

From a review of my file pertaining to Phase I, it appears that you have all the relevant information pertaining to this Application and the accompanying Mitigation Plan per my previous letters of May 20, 2002, June 18, 2002 and March 10, 2003. Based upon that you sent a letter to IDWR withdrawing BRWUA's prior protest.

Application for Permit No. 11-7491 pertains to Phase II of the project and is basically identical, with the same Mitigation Plan providing for the use of Sam's Hollow's shares in Fish Haven Water Users Company for mitigation purposes, the same Depletion Analysis as per Robert Hill, and the same water requirements and water balance analysis used for Phase I of the project and carried over to Phase II. While the Application pertaining to Phase I was published, Phase II was held pending the Department's adoption recently of the Ground Water Management Plan for the Bear River Ground Water Management Area, which included the Mitigation Plan.

As you indicated you did not have information pertaining to Phase II, I am enclosing the following documents:

1. Application for Permit No. 11-7491.
2. Phase II Narrative in Support of Application.
3. Phase II Place of Use and Point of Diversion Map.
4. Phase II Water Requirements and Water Balance Analysis.
5. Phase II Depletion Analysis as per Robert Hill.
6. Agreement dated March 14, 2002, between Fish Haven Water Users Company and Sam's Hollow Water Company. This provides for the use of Sam's shares in Fish Haven for mitigation purposes. This is the same agreement relating to Phase I and you should already have a copy of that.
7. Preliminary Order Adopting a Ground Water Management Plan issued by IDWR on February 24, 2003. This has since become a Final Order. You should already have a copy of this but I am enclosing an additional copy for your convenient reference.

Read carefully the Application and supporting enclosures which collectively form the Mitigation Plan. I would suggest you also carefully compare it to the Management Plan for the Bear River Ground Water Management Area attached as Exhibit A to the Order, particularly subpart F pertaining to processing applications to appropriate ground water (page 6-8).

Under F.4., you will find the "Requirements for a Proposed Mitigation Plan (Simplified Method)", which has been referred to as a "safe harbor", i.e., if the application follows the "Simplified Method" by providing mitigation water to fully replace the depletion, the mitigation plan would meet the test and the Application for a new water right will be approved for the reason that there will be no injury to other senior surface water rights.

Note also that subpart G, pertaining to sources of water for mitigation, provides in Part 2 that "the Department will encourage flexibility in the use of shares to allow transfers of irrigation company shares to new uses pursuant to company enacted policy."

Keep in mind, the overall purpose of the Ground Water Management (adopted by IDWR as a result of the joint Petition of BRWUA and PacifiCorp) was to put BRWUA, PacifiCorp and other right holders in Bear Lake and Bear River in the position that they would no longer have to protest new applications in Idaho. This is because new applications could only be approved by IDWR if they included a Mitigation Plan that met all of the requirements to ensure no injury to other right holders. Jody Williams, Claudia Conder, Bob Hill (as well as myself and Chuck Brockway) were extensively involved in all of the committee meetings and the primary drafters of the Ground Water Management Plan, including the mitigation provisions ultimately adopted by IDWR. Quite frankly, that's why it is so puzzling to me that PacifiCorp has not withdrawn their protest to Phase I and has again protested Phase II when in fact the Mitigation Plans proposed by these applications fully comply. I understand that in not immediately withdrawing its protest and in scheduling the on-site meeting in July, PacifiCorp may simply be acting ultra-cautious since this will be the first Mitigation Plan approved and it could set some precedents.

You will recall the only reason I got involved and agreed to represent Sam's Hollow in the first place, following full disclosure of the potential conflict and approval of the BRWUA Board, was to ensure that the hydrologists were involved and that the applications were processed only the basis of a complete and accurate Mitigation Plan that would ensure that there was no depletion of Bear River water not fully mitigated, so there would be no injury to any Bear River water right holders. Keep in mind that the Mitigation Plan under both of these Applications was developed before the Department ever adopted the Ground Water Management Plan, yet fits squarely within the "simplified method" or "safe harbor". That should become as no surprise, as Hill and Brockway were involved in preparing both.

What started out as something rather simple and straightforward has become much more involved and complicated, unnecessarily in my opinion, than it should have been. Certainly, that wasn't anticipated.

I see the upcoming meeting between the Applicant, PacifiCorp and other protestants at Fish Haven on July 1 as one primarily for the purpose of explaining what the Mitigation Plan is all about and answering questions of those who are either misinformed or simply haven't taken the time to read the Mitigation Plan and the enclosed documents. Please look over this information and give me a call so we can discuss it and address any questions or concerns you have. If you have any concerns or unanswered questions whatsoever that the Sam's Hollow Mitigation Plan does not fully mitigate for depletion, or that there is somehow going to be an injury to surface water rights, we need to get it out on the table. I am sure any questions can be readily answered. If that's not the case and we have a conflict, it probably needs to be taken up with the BRWUA Board, particularly as that would place me in a position of conflict, which I must avoid.

D. Brent Rose
June 18, 2003
Page 4

I am sending a copy of this letter and the enclosures to both Marc Gibbs and Charles Holmgren for their information and review and so that they can be included in any discussions with you and/or me if needed.

Sincerely,

RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Marc Gibbs (w/encls.)
Charles Holmgren (w/encls.)
Harold W. Jones/Supervisor/IDWR

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Department of Water Resources
Eastern Region

June 18, 2003

Dave Cottle, President
Bear Lake Watch
P.O. Box 205
Fish Haven, Idaho 83287

St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. 89
St. Charles, Idaho 83272

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287

Re: *Sam's Hollow Water Company*
Application for Permit No. 11-7481 (Phase I)
Application for Permit No. 11-7491 (Phase II)

Dear Dave, Leon, Glenn and Bill:

Since each of you protested the above-referenced Applications of Sam's Hollow, and I expect do not have complete and accurate information available, I am writing to provide you information regarding the Application and also documents pertaining to the Mitigation Plan which was filed along with the Application with the Idaho Department of Water Resources (IDWR). The purpose of the Mitigation Plan, which was prepared by Hydrologist, Dr. Chuck Brockway, who consulted with PacifiCorp's hydrologist, Dr. Bob Hill at the time, is to make sure that any water depleted from the ground water as a result of the

June 18, 2003

Page 2

new wells, will be fully mitigated and replaced by water Sam's Hollow has available from Fish Haven Water Users Company.

Application for Permit No. 11-7491 pertains to Phase II of the project and is basically identical, with the same Mitigation Plan providing for the use of Sam's Hollow's shares in Fish Haven Water Users Company for mitigation purposes, the same Depletion Analysis as per Robert Hill, and the same water requirements and water balance analysis used for Phase I of the project and carried over to Phase II. While the Application pertaining to Phase I was published some time ago, Phase II was held pending the Department's adoption recently of the Ground Water Management Plan for the Bear River Ground Water Management Area, which included the Mitigation Plan.

I am enclosing the following documents:

1. Application for Permit No. 11-7491.
2. Phase II Narrative in Support of Application.
3. Phase II Place of Use and Point of Diversion Map.
4. Phase II Water Requirements and Water Balance Analysis.
5. Phase II Depletion Analysis as per Robert Hill.
6. Agreement dated March 14, 2002, between Fish Haven Water Users Company and Sam's Hollow Water Company. This provides for the use of Sam's shares in Fish Haven for mitigation purposes. This is the same agreement relating to Phase I and you should already have a copy of that.
7. Preliminary Order Adopting a Ground Water Management Plan issued by IDWR on February 24, 2003. This has since become a Final Order. You should already have a copy of this but I am enclosing an additional copy for your convenient reference.

Read carefully the Application and supporting enclosures which collectively form the Mitigation Plan. I would suggest you also carefully compare it to the Management Plan for the Bear River Ground Water Management Area attached as Exhibit A to the Order, particularly subpart F pertaining to processing applications to appropriate ground water (page 6-8).

Under F.4., you will find the "Requirements for a Proposed Mitigation Plan (Simplified Method)", which has been referred to as a "safe harbor", i.e., if the application follows the "Simplified Method" by

June 18, 2003

Page 3

providing mitigation water to fully replace the depletion, the mitigation plan would meet the test and the Application for a new water right will be approved for the reason that there will be no injury to other senior surface water rights.

Note also that subpart G, pertaining to sources of water for mitigation, provides in Part 2 that "the Department will encourage flexibility in the use of shares to allow transfers of irrigation company shares to new uses pursuant to company enacted policy."

Keep in mind, the overall purpose of the Ground Water Management (adopted by IDWR as a result of the joint Petition of the Bear River Water Users Association (BRWUA) and PacifiCorp) was to put BRWUA, PacifiCorp and other right holders in Bear Lake and Bear River in the position that they would no longer have to protest new water right applications in the Bear River Basin in Idaho. This is because new applications could only be approved by IDWR if they included a Mitigation Plan that met all of the requirements to ensure no injury to other right holders. PacifiCorp, Bob Hill and many other representatives from the cities, counties and right holders (as well as myself and Chuck Brockway) were extensively involved in all of the committee meetings and the primary drafters of the Ground Water Management Plan, including the mitigation provisions ultimately adopted by IDWR. Quite frankly, that is why it is so puzzling that you folks have protested this Application when in fact the Mitigation Plans proposed by these applications fully comply.

The upcoming meeting between the Applicant, PacifiCorp and other protestants at Fish Haven in July is primarily for the purpose of explaining what the Mitigation Plan is all about and answering questions of those who may not understand it or are misinformed or simply haven't taken the time to read the Mitigation Plan and the enclosed documents. Please look over this information and give me a call if you have any questions or concerns.

If you have any questions, I would suggest you participate in the upcoming on-site meeting to review the project and explain the Mitigation Plan. PacifiCorp's representatives, including their hydrologist, Dr. Hill, will be present, as will representatives from the Applicant, Sam's Hollow, and its hydrologist, Dr. Brockway. Presently this meeting is scheduled to begin there at the Bear Lake Regional Commission Office in Fish Haven at 8:00 a.m. on July 1. However, due to conflicts some have at this moment, it appears that the meeting will be rescheduled for 10:30 a.m. on July 10. Someone will let you know if the date changes, and if you haven't heard, feel free to contact me or my secretary Robin Roebuck.

If you are not able to withdraw your protests before or after the meeting, they will be scheduled for hearing before IDWR and you will have the burden of proving your protest.

June 18, 2003

Page 4

I am confident Sam's Hollow can establish its Mitigation Plan fully complies with all legal requirements and that no other water user will be injured.

Sincerely,

A handwritten signature in cursive script that reads "Randy Budge". The signature is written in dark ink and is positioned above the printed name.

RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Harold W. Jones/Supervisor/IDWR
Bill Stock, President/Fish Haven Water Users

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June 12, 2003

D. Brent Rose
Clyde Snow Sessions & Swenson
201 South Main Street
Salt Lake City, Utah 84111-2216

*Re: Your Protest of Sam's Hollow Water Company Application
For Permit No. 11-7491*

Dear Brent:

I represent the Applicant Sam's Hollow Water Company, and have been provided by the Idaho Department of Water Resources (IDWR) a copy of your recent Protest.

While I can appreciate your concern about new development and this application in the area, Sam's Hollow believes that there is simply no factual or legal basis that supports your protest. Sam's Hollow in filing its application included a mitigation plan, which fully complies with all mitigation plan requirements recently established by IDWR as a part of the Bear River Ground Water Management Area. I assume you have a copy of that Mitigation Plan Order, as well as a copy of the Application filed, which included detailed information and calculations regarding the mitigation plan submitted by Sam's Hollow. This mitigation plan is designed to ensure that there is absolutely no depletion or other adverse effect on the water supplies available in the Bear Lake-Bear River drainage. It does so by ensuring that the applicant Sam's Hollow uses water rights it owns in Fish Haven Water Users Company to mitigate or replace any and all water depleted from the new wells that would be installed as a part of this development. If you don't have any of this information, have questions or wish to discuss it further, please don't hesitate to give me a call.

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JUN 13 2003

Department of Water Resources
Eastern Region

June 12, 2003

Page 2

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Again, I would encourage you to have someone there at the 8:00 a.m. July 1 meeting, which I expect will gather there at the office of the Bear Lake Regional Commission as a starting point.

Sincerely,

RANDALL C. BUDGE

RCB:rr

cc: Con Gerdes
Charles Brockway
Harold W. Jones, IDWR Water Right Supervisor

LAW OFFICES OF

**RACINE, OLSON, NYE, BUDGE &
BAILEY
CHARTERED**

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
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LISA M. CHRISTON
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
PATRICK N. GEORGE
SCOTT J. SMITH
LISA A. WOOD, CPA
STEPHEN J. MUHONEN

CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

BOISE OFFICE

CONRAD J. AIKEN
THEODORE C. PETERS
DEBORAH L. LEHOSIT

101 SOUTH CAPITOL
BOULEVARD
U.S. BANK PLAZA, SUITE 202
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

June 12, 2003

St. Charles Irrigation Company
c/o Glenn Rich
5473 U.S. 89
St. Charles, Idaho 83272

*Re: Your Protest of Sam's Hollow Water Company Application
For Permit No. 11-7491*

Dear Mr. Rich:

I represent the Applicant Sam's Hollow Water Company, and have been provided by the Idaho Department of Water Resources (IDWR) a copy of your recent Protest.

While I can appreciate your concern about new development and this application in the area, Sam's Hollow believes that there is simply no factual or legal basis that supports your protest. Sam's Hollow in filing its application included a mitigation plan, which fully complies with all mitigation plan requirements recently established by IDWR as a part of the Bear River Ground Water Management Area. I assume you have a copy of that Mitigation Plan Order, as well as a copy of the Application filed, which included detailed information and calculations regarding the mitigation plan submitted by Sam's Hollow. This mitigation plan is designed to ensure that there is absolutely no depletion or other adverse effect on the water supplies available in the Bear Lake-Bear River drainage. It does so by ensuring that the applicant Sam's Hollow uses water rights it owns in Fish Haven Water Users Company to mitigate or replace any and all water depleted from the new wells that would be installed as a part of this development. If you don't have any of this information, have questions or wish to discuss it further, please don't hesitate to give me a call.

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BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

June 12, 2003

Leon Howell
P.O. Box 117
Fish Haven, Idaho 83287

*Re: Your Protest of Sam's Hollow Water Company Application
For Permit No. 11-7491*

Dear Leon:

I represent the Applicant Sam's Hollow Water Company, and have been provided by the Idaho Department of Water Resources (IDWR) a copy of your recent Protest.

While I can appreciate your concern about new development and this application in the area, Sam's Hollow believes that there is simply no factual or legal basis that supports your protest. Sam's Hollow in filing its application included a mitigation plan, which fully complies with all mitigation plan requirements recently established by IDWR as a part of the Bear River Ground Water Management Area. I assume you have a copy of that Mitigation Plan Order, as well as a copy of the Application filed, which included detailed information and calculations regarding the mitigation plan submitted by Sam's Hollow. This mitigation plan is designed to ensure that there is absolutely no depletion or other adverse effect on the water supplies available in the Bear Lake-Bear River drainage. It does so by ensuring that the applicant Sam's Hollow uses water rights it owns in Fish Haven Water Users Company to mitigate or replace any and all water depleted from the new wells that would be installed as a part of this development. If you don't have any of this information, have questions or wish to discuss it further, please don't hesitate to give me a call.

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June 12, 2003

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Sincerely,

RANDALL C. BUDGE

RCB:rr

cc: Con Gerdes
Charles Brockway
Harold W. Jones, IDWR Water Right Supervisor

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BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

June 12, 2003

David R. Cottle
Bear Lake Watch, Inc.
P.O. Box 205
Fish Haven, Idaho 83287

*Re: Your Protest of Sam's Hollow Water Company Application
For Permit No. 11-7491*

Dear Mr. Cottle:

I represent the Applicant Sam's Hollow Water Company, and have been provided by the Idaho Department of Water Resources (IDWR) a copy of your recent Protest.

While I can appreciate your concern about new development and this application in the area, Sam's Hollow believes that there is simply no factual or legal basis that supports your protest. Sam's Hollow in filing its application included a mitigation plan, which fully complies with all mitigation plan requirements recently established by IDWR as a part of the Bear River Ground Water Management Area. I assume you have a copy of that Mitigation Plan Order, as well as a copy of the Application filed, which included detailed information and calculations regarding the mitigation plan submitted by Sam's Hollow. This mitigation plan is designed to ensure that there is absolutely no depletion or other adverse effect on the water supplies available in the Bear Lake-Bear River drainage. It does so by ensuring that the applicant Sam's Hollow uses water rights it owns in Fish Haven Water Users Company to mitigate or replace any and all water depleted from the new wells that would be installed as a part of this development. If you don't have any of this information, have questions or wish to discuss it further, please don't hesitate to give me a call.

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RCB:rr

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Charles Brockway
Harold W. Jones, IDWR Water Right Supervisor

June 12, 2003

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Charles Brockway
Harold W. Jones, IDWR Water Right Supervisor

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 11-4022

WATER RIGHT NUMBER: 11-4022

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	FISH HAVEN WATER USERS CO PO BOX 117 FISH HAVEN, ID 83287 (208) 945-2352
Representative	LEON HOWELL PO BOX 117 FISH HAVEN, ID 83287 (208) 945-2352

Priority Date: 05/18/1871

Basis: Statutory Claim

Status: Active

<u>Source</u>	<u>Tributary</u>
FISH HAVEN CREEK SPRING	BEAR LAKE FISH HAVEN CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/15 to 11/02	29.600 CFS	
	<u>Total Diversion:</u>	29.600 CFS	

Location of Point(s) of Diversion

FISH HAVEN CREEK BEAR LAKE County	NW1/4SW1/4	Sec. 14, Twp 16S, Rge 43E, B.M.
FISH HAVEN CREEK BEAR LAKE County	SW1/4NE1/4	Sec. 15, Twp 16S, Rge 43E, B.M.
FISH HAVEN CREEK BEAR LAKE County	NE1/4NW1/4SE1/4	Sec. 15, Twp 16S, Rge 43E, B.M.
FISH HAVEN CREEK BEAR LAKE County	NW1/4SE1/4NE1/4	Sec. 16, Twp 16S, Rge 43E, B.M.
FISH HAVEN CREEK BEAR LAKE County	SW1/4NW1/4NE1/4	Sec. 16, Twp 16S, Rge 43E, B.M.
SPRING BEAR LAKE County	SW1/4NW1/4NE1/4	Sec. 16, Twp 16S, Rge 43E, B.M.

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	43E	35			15.0	5.0					3.0			8.0	23.0	33.0	20.0	20.0	127.0

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 11-4022

16S 43E 2	7.0	5.0	20.0	7.0										27.0		28.0		94.0
16S 43E 10															37.0	40.0	18.0	95.0
16S 43E 11		16.0	9.0		10.0		9.0	6.0	40.0		35.0		5.0	4.0				134.0
16S 43E 14		10.0	15.0		40.0	30.0	36.0	31.0	40.0	40.0	18.0	13.0		3.0				276.0
16S 43E 22	40.0	40.0	40.0	30.0	40.0	13.0	17.0	22.0	10.0	20.0	24.0	15.0	18.0	26.0	38.0	5.0		398.0
16S 43E 23						20.0												20.0
16S 43E 27	13.0	15.0	7.0	10.0		17.0	6.0											68.0

Total Acres: 1212

Conditions of Approval:Remarks:Comments:Dates and Other Information:

Licensed Date:
 Decreed Date:
 Water Supply Bank Enrollment Accepted:
 Water Supply Bank Enrollment Removed:
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 State or Federal:
 Owner Name Connector:
 Water District Number: 11
 Generic Max Rate Per Acre:
 Generic Max Volume Per Acre:
 Decree Defendant:
 Decree Plaintiff:
 Civil Case Number:
 Judicial District:
 Swan Falls Trust or Nontrust: N
 Swan Falls Dismissed:
 DLE Act Number:
 Carey Act Number:
 Mitigation Plan: False

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,
County of Bear Lake

SS.

Rosa S. Mossman

being duly sworn,

deposes and says:

That he is the Editor of THE NEWS-EXAMINER, a weekly newspaper published at Montpelier, in the County of Bear Lake and State of Idaho; and said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Montpelier; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for 2 consecutive weeks in the regular and entire issue of said paper during the period and time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

May 7, 192003, and ending

with the issue of May 14, 192003

Fees, \$83.00
Rosa S. Mossman

Subscribed and sworn to before me this 28th day

of May, 192003

Sherry Brown
Notary Public, Residing at Montpelier, Idaho

My Commission Expires August 28, 192003

NOTICE TO WATER USERS

The following application(s) have been filed to appropriate the public waters of the State of Idaho: 11-7491

SAMS HOLLOW
WATER COMP
201 E CENTER ST
POCATELLO ID 83201

Point(s) of Diversion: SWNE
S10 T16S R43E, BEAR LAKE
County

Source GROUND WATER
Use: DOMESTIC

01/01 To 12/31 1.22 CFS
Total Diversion: 1.22 CFS
Date Filed: 05/21/2002

Place Of Use: DOMESTIC
T16S R43E S10 NENE NWNE
SWNE SENE

T16S R43E S11 NWNE SWNE
NENW NWNW

T16S R43E S2 NESW NWSW
SSWS SESW NWSE

Applicants propose to give up additional shares in the Fish Haven Irrigation Company as mitigation. This is the same type of plan proposed for application #11-7481. A copy of the plan is available upon request.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before May 27, 2003. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER
Director

Publish May 7 and 14, 2003 —
Legal No. 6719.





State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 29, 2003

SAMS HOLLOW WATER CO
201 E CENTER ST
POCATELLO ID 83201

Application to Permit No. 11-7491

Dear Applicant(s):

Enclosed is a copy of a protest filed against approval of the above referenced application. The Department suggests that you contact the protestant(s) directly to determine the nature of the protest and, if possible, to resolve the matter without action by the Department. In our experience, informal discussion between the parties prior to initiation of formal proceedings often leads to resolution of the protest.

If the protest cannot be resolved informally, the matter will be scheduled for conference and/or hearing. The following are criteria the Department must consider in either approving or denying the application (Section 42-203A, Idaho Code).

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. Please contact this office if you have any questions regarding this procedure.

Sincerely,

Harold W Jones
Water Right Supervisor

HWJ:sc

CC: State Office



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 29, 2003

BEAR LAKE WATCH INC
PO BOX 205
FISH HAVEN, ID 83287

Application to Permit No. 11-7491

Dear Protestant(s):

The Department of Water Resources acknowledges receipt of your protest against the approval of the above referenced application. A copy of your protest has been sent to the applicant. The Department suggests that you contact the applicant directly for details regarding the application and, if possible, to resolve the matter without action by the Department. In our experience, informal discussion between the parties prior to initiation of formal proceedings often leads to resolution of the protest.

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Harold W Jones
Water Right Supervisor

HWJ:sc

CC: State Office



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EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 29, 2003

Jody Williams
Holme Roberts & Owen LLP
299 S Main St Ste 1800
Salt Lake City UT 84111-2263

PACIFICORP
C/O CLAUDIA CONDOR
1407 W NORTH TEMPLE STE 320
SALT LAKE CITY, UT 84116

Application to Permit No. 11-7491

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Harold W Jones
Water Right Supervisor

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CC: State Office



State of Idaho

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EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 29, 2003

LEON HOWELL
PO BOX 117
FISH HAVEN, ID 83287

Application to Permit No. 11-7491

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Harold W Jones
Water Right Supervisor

HWJ:sc

CC:



State of Idaho

DEPARTMENT OF WATER RESOURCES

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EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 29, 2003

ST CHARLES IRRIGATION CO
C/O GLENN RICH
5473 US 89
ST CHARLES, ID 83272

Application to Permit No. 11-7491

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Sincerely,

Harold W Jones
Water Right Supervisor

HWJ:sc

CC: State Office

Representative for Bear Lake Watch, Inc.

RECEIVED
MAY 27 2003
Department of Water Resources
Eastern Region

)

)
)
)
)
)

**Protest of
Bear Lake Watch, Inc.
Protestant**

- Receipt #
EO28815

7. Fish Haven Creek has no method of accurately measuring this quantity of mitigated water (at the point of original diversion) and also has no accurate method of measurement at each downstream point of diversion. The proper amount of water to be returned to Bear Lake via the Fish Haven Creek channel must be quantified not only on paper with the mitigation plan but that amount must be able to verifiably reach the Lake.

8. Furthermore, since this is one of the first applications submitted under the new Idaho Ground Water Management Plan, every effort should be made to insure that this application conforms to this Plan in every way and intent. This will become the precedent setting example and must be done correctly without any shortcuts or reliance on previous applications or mitigation plans.

WHEREFORE, Protestant respectfully protests the above-referenced application and requests the following:

A. That the applications be denied or that as a condition of approval, the Applicant be required to conform with the Idaho Ground Water Management Plan.

DATED: this 24th day of May, 2003.

BEAR LAKE WATCH, INC.

BY David R. Cottle
David R. Cottle

BEAR LAKE WATCH, INC.

P.O. Box 205

Fish Haven, ID 83287

Telephone: (208) 945-2872

MAILING CERTIFICATE

On this 24th day of May, 2003, I mailed a true and correct copy of the foregoing Protest, postage prepaid, to:

Idaho Division of Water Resources
Eastern Division
900 North Skyline Drive
Idaho Falls, ID 83402

Karl Dreher, Director
Idaho Dept. of Water Resources
1301 North Orchard Street
Boise, ID 83706

Randall C. Budge
Racine, Olson, Nye, Cooper, & Budge
P.O. Box 1391
Pocatello, ID 83204-0391

Claudia Conder
c/o PacifiCorp
1407 West North Temple
Salt Lake City, UT 84140

David R. Cottle
Signature

CLYDE SNOW SESSIONS & SWENSON

A PROFESSIONAL CORPORATION

CLARK W. SESSIONS
RODNEY G. SNOW
STEVEN E. CLYDE
HAL N. SWENSON
E. BARNEY GESAS
EDWIN C. BARNES
NEIL A. KAPLAN*
D. BRENT ROSE
CHARLES R. BROWN
J. SCOTT HUNTER
PERRIN R. LOVE*
DEAN C. ANDREASEN
ANNELI R. SMITH
GAINER M. WALDBILLIG
WALTER A. ROMNEY, JR.
MATTHEW A. STEWARD
T. MICKELL JIMENEZ ROWE
WENDY B. CROWTHER
JAMES P. ALDER
JENNIFER A. JAMES†

* ALSO ADMITTED IN WASHINGTON, D.C.

† ALSO ADMITTED IN COLORADO

ATTORNEYS AT LAW
ONE UTAH CENTER
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201 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84111-2216
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EDWARD W. CLYDE
(1917-1991)

WILLIAM VOGEL
OF COUNSEL

TELEPHONE
(801) 322-2516

FAX (801) 521-6280
css@clydesnow.com

May 21, 2003

RECEIVED

SEP 17 2003

Idaho Department of Water Resources
Eastern Division
900 North Skyline Drive
Idaho Falls, Idaho 83402

Department of Water Resources

Re: Application for Permit No. 11-7491
Filed by Sam's Hollow Water Company

To Department Officials:

This office represents the Bear River Water Users' Association (referred to herein as the "Association"). The Association is a non-profit corporation and cooperative association organized in 1994 to represent Bear River Basin water users for the purpose, among other things, of monitoring, protecting and defending their respective decreed and appropriated water rights and other contract rights and common interests in and to the natural flow of water in the Bear River and its tributaries and irrigation storage water in Bear Lake. The Association's membership includes the Last Chance Canal Company, West Cache Canal Company, Cub River Irrigation Company and approximately 22 irrigation pumpers in Idaho, and the Bear River Canal Company and approximately 81 irrigation pumpers in Utah. Collectively, the Association's members represent approximately 3,000 family farms having a combined irrigated acreage of approximately 151,000 acres in Idaho and Utah.

Members of the Association hold decreed and other appropriated rights under the respective laws of the States of Idaho and Utah for the diversion and use of the natural flow of water in the Bear River and its tributaries, for irrigation, stock watering and other purposes. The direct flow rights of the Association's members are all supplemented with water which is held in storage in Bear Lake and released to them for use pursuant to contracts executed by and between each of the individual

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MAY 27 2003

Department of Water Resources
Eastern Region

LETTER OF CONCERN

CLYDE SNOW SESSIONS & SWENSON

Idaho Department of Water Resources

May 21, 2003

Page 2

members and PacifiCorp.

The Association's members assert that approval of the Application, without the imposition of sufficient and verifiable conditions to the appropriation, will result in a direct and significant impairment of their prior vested direct flow and contract water rights. The Association has the following concerns:

1. The diversion and use of water by the Applicant pursuant to the proposed Application, without proper mitigation, will result in additional depletions of tributary water that would otherwise flow in Bear Lake and thus adversely and significantly impairs the decreed and appropriated water rights of the Association's members in Bear River and pursuant to their supplemental storage contracts with PacifiCorp.

2. When the natural flow of the Bear River is insufficient to satisfy the decreed and appropriated water rights of the Association's members, the members of the Association depend upon the supplemental water supply delivered out of storage in Bear Lake by PacifiCorp in satisfaction of PacifiCorp's contractual obligations to them. Any new appropriation in the Bear River Basin, and particularly in and around Bear Lake, increases the already unsustainable demand on Bear Lake storage water which PacifiCorp is obligated to deliver pursuant to its supplemental irrigation water contracts with the Association's members. The diversion and use of water by the Applicant pursuant to the proposed Application and the resultant diminution of water available for storage in Bear Lake, without proper mitigation, will adversely impair PacifiCorp's storage water right in Bear Lake and correspondingly impair the contractual rights of the Association's members to receive supplemental Bear Lake storage water.

3. Authorizing the diversion and use of water as proposed in the Application is inconsistent with the interest of the public in the sense that any action which serves to decrease the supply of water in storage in Bear Lake is detrimental to the local economy of the communities surrounding Bear Lake as well as those having non-consumptive uses and interests in Bear Lake including recreation, wildlife and fish habitat. As lake levels decline, a serious conflict arises between these interests, who favor retaining water in Bear Lake, and the interest of the Association's members who depend upon the delivery of water out of Bear Lake for their livelihood. Such a conflict of interest is detrimental to the public good and welfare.

4. Consideration of the Application needs to be withheld until the Applicant has in place, and approval of the Application must be conditioned upon, a mitigation plan that is legally and

CLYDE SNOW SESSIONS & SWENSON

Idaho Department of Water Resources

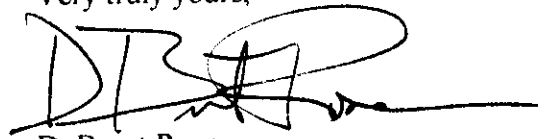
May 21, 2003

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physically sufficient, verifiable and enforceable so as to ensure that the Association's prior vested rights are not impaired or otherwise interfered with in any way by the appropriation proposed by the Applicant.

Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Brent Rose', with a long horizontal flourish extending to the right.

D. Brent Rose

cc: Marc Gibbs
Randy Budge
Jody Williams
Jim Kimball

Receipt # EC 28810

Idaho Department of Water Resources

St Charles Irrigation Company

c/o Glenn Rich

5473 US 89 St. Charles
May 21, 2003 Idaho 83272

RE: Protest to Water Right NO. 11-7491, Sam's Hollow Water Company Water Right Application

To the Idaho Department of Water Resources:

This protest is written in behalf of approximately 180 share holders in the St Charles Irrigation Company and Glenn Rich as a share holder in the Fish Haven Water Users. Developments and their water issues do not concern the Irrigating Company unless it infringes on the water rights of its members. We believe that Water Right Application No. 11-7491, that converts surface irrigation water to ground water intended for domestic use is unprecedented in this area. If this were approved, it would expedite similar applications that may effect our irrigation company. As an Irrigation Company it would be extremely problematic if share holders could simply convert irrigation water shares to non-irrigation purposes. The present irrigation company with its infrastructure of dams, canals etc. was setup and designed to serve agricultural irrigators and does not have the facilities or the means to accommodate other uses of water.

Other concerns of the Irrigation Company members:

- No historical water usage data is available to use in factoring how much water Sam's Hollow Water Company would have for future domestic use
- Water right does not guarantee a certain quantity of water. Their share during a drought cycle may not be adequate for their needs
- Effect on canal maintenance
- Negative effect on traditional pattern of use by other share holders
- St Charles Irrigating Company, Fish Haven Water Users, Idaho Fish and Game, and the Governor's Office of Species Conservation are working on projects to restore Bonneville Cutthroat trout habitat, irrigation water converted to domestic use would be unavailable to assist in this project
- Effects on traditional landscapes, such as wetlands and wildlife habitat
- Water taken for domestic use ends up in contained evaporation pond and is depleted from the local hydrological system

We respectfully request that you take this protest into serious consideration.

Respectfully,

St Charles Irrigation Company Board of Directors

Glenn B. Rich

Glenn S. Poirer

Wayne Chertub

H. Dean Michaels

Wayne Chertub

cc: Sam's Hollow Water Company

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MAY 27 2003
Department of Water Resources
Eastern Region

MAY 27 2003

Receipt # E028809

RECEIVED

FISH HAVEN, IDAHO

May 25, 2003

DEPT OF WATER RESOURCES
EASTERN REGION
900 N. SKYLINE DR. STE A
IDAHO FALLS, IDAHO 83402

DEAR SIRs:

I WOULD LIKE TO GO ON RECORD PROTESTING THE APPLICATION TO
APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO,
APPLICATION #11-7491, BY SAM'S HOLLOW WATER COMPANY, 201 E.
CENTER STREET, POCATELLO, IDAHO 83201.

I HAVE A LIFETIME ASSOCIATION IN AND WITH FISH HAVEN AND BEAR
LAKE COUNTY WHERE I HAVE LIVED MORE THAN 75 YEARS. THE ONLY
EXTENDED PERIOD OF TIME I HAVE BEEN AWAY FROM THIS AREA WAS
DURING MY TWO TOURS OF DUTY WITH THE U.S. MILITARY AND WHILE
TEACHING FOR ONE YEAR IN PORTLAND, OREGON. I AM A FOURTH
GENERATION RESIDENT AND LAND OWNER IN FISH HAVEN.

WHENEVER ANY MEETINGS OR HEARINGS OCCUR ABOUT
DEVELOPMENT AND CHANGE IN THIS AREA I HAVE TRIED TO BE AT ALL
SUCH MEETINGS.

MY PROTEST AT THOSE MEETINGS, AND AS IT REMAINS NOW, IS THAT
WE HAVE A VERY LIMITED AMOUNT OF WATER IN THE FISH HAVEN AREA.
THE AMOUNT OF WATER IS NOT SUFFICIENT TO SUPPORT THE PRESENT
IRRIGATION SYSTEM IN AN ADEQUATE FASHION. THE HOWARD
JOHNSON DEVELOPMENT COMPANY'S ONGOING APPLICATION FOR A
SPECIAL USE PERMIT FILED THROUGH BEAR LAKE COUNTY WAS DATED
FEBRUARY 23, 2000. THE SAM'S HOLLOW WATER COMPANY WATER
APPLICATION SHOULD NOT BE ADDED TO THE HOWARD JOHNSON
SPECIAL USE PERMIT WITHOUT PRIOR ACTION BY BEAR LAKE COUNTY'S
PLANNING COMMISSION AND COUNTY COMMISSION.

Receipt # E028809

THERE SEEMS TO BE AN ATTEMPT TO PUSH THE SAM'S HOLLOW WATER COMPANY APPLICATION PAST THE COUNTY IN ONE FORMAT BUT THROUGH THE WATER RESOURCES BOARD IN AN EXPANDED FORMAT. MY REVIEW INDICATES THE APPLICATION FROM SAM'S HOLLOW WATER COMPANY IS NOT COMPLETE. PARTS OF THE APPLICATION HAVE BEEN WITHDRAWN. SIGNIFICANT TO THE PHASE II APPLICATION FILED WITH WATER RESOURCES IS A REFERENCE TO AN AGREEMENT TO SHARE WATER SHARES AMONG VARIOUS PARTIES -- SPECIFICALLY INCLUDING ELDON AND ALTON KEARL. IT MUST BE NOTED THAT THE AGREEMENT EXECUTED BY TWO DIRECTORS OF THE FISH HAVEN WATER USERS COMPANY **DOES NOT INCLUDE** WATER SHARES OWNED BY THE KEARLS. THE SAM'S HOLLOW APPLICATION TO THE WATER RESOURCES BOARD IS THEREFORE FAULTY AND INACCURATE.

THE LOCAL FISH HAVEN WATER USERS COMPANY IS BEING PRESSURED TO GIVE APPROVAL EVEN WITHOUT CONSULTING WITH OUR STOCKHOLDERS. I AM A DIRECTOR OF THIS ORGANIZATION AND DO NOT WANT TO SET A PRECEDENT THAT COULD HARM OUR COMPANY NOW OR IN THE FUTURE. I HAVE THEREFORE VOTED "NO" ON THE PROPOSAL AS IT WAS PRESENTED TO THE BOARD.

THE FISH HAVEN WATER USERS COMPANY HAS A STATUTORY CLAIM, #11-04022, FOR 29.6 CFS OF WATER. THE FISH HAVEN WATER USERS COMPANY HAS BEEN ADVISED THAT THIS CLAIM SHOULD HAVE A GENERAL ADJUDICATION BY THE STATE OF IDAHO AS DONE IN THE SNAKE RIVER BASIN. IT WOULD BE LOGICAL THAT SUCH AN ADJUDICATION SHOULD BE COMPLETED PRIOR TO CONSIDERING TRANSFER OF ANY WATER FROM AN IRRIGATION TO A CULINARY USE, SUCH AS THIS PROPOSAL PRESENTS.

THE FISH HAVEN WATER USERS COMPANY HAS TAKEN STEPS TO DETERMINE THE ACTUAL AMOUNT OF WATER AVAILABLE TO OUR CLAIM. THE COMPANY HAS INSTALLED FIVE WATER MEASURING DEVICES. THE HOWARD JOHNSON DEVELOPMENT COMPANY AND CHARLES BROCKWAY ENGINEERING DELIVERED TO THE JOHNSON PROPERTY

THREE MEASURING DEVICES. AS STATED IN MY PROTEST CONCERNING APPLICATION #11-7481, THE FISH HAVEN WATER USERS COMPANY REJECTED THE WATER MEASURING DEVICES BECAUSE THE DESIGN AND SIZE HAS PROVEN INADEQUATE FOR OUR WATER DITCHES. NEVERTHELESS, THE DEVICES WERE INSTALLED AND THE CURRENT SITUATION IS THAT ONE DEVICE IS SLATED FOR REPLACEMENT BECAUSE IT IMPEDED THE WATER FLOW AND CAUSED SEEPAGE INTO SURROUNDING PROPERTY. THE REMAINING TWO DEVICES ARE UNDER CONSIDERATION FOR SIMILAR REPLACEMENT DUE TO THE SAME DIFFICULTY.

AFTER ADEQUATE MEASURING DEVICES ARE FOUND AND INSTALLED THEY MUST BE USED AND REGULARLY MONITORED FOR AN EXTENDED AMOUNT OF TIME TO DETERMINE THE AVAILABLE FLOW OF WATER TO THE FISH HAVEN WATER USERS COMPANY. THIS PROCESS CANNOT BEGIN UNTIL ADEQUATE MEASURING DEVICES ARE IN PLACE.

THE FISH HAVEN WATER USERS COMPANY CLAIMS WATER USE FROM APRIL 15TH THROUGH NOVEMBER 2ND OF EACH YEAR. THE REMAINDER OF THE YEAR IS CLAIMED BY UTAH POWER. DURING THE IRRIGATION SEASON OF 2001 STARTING APRIL 15TH, ALL THE AVAILABLE WATER WAS PUT INTO #3 DITCH. THE OTHER FOUR DITCHES WERE DRY AT THAT TIME. AS THE SEASON WARMED UP AND MORE SNOW MELTED, WATER WAS ADDED TO THE OTHER DITCHES. IT WASN'T UNTIL JUNE THAT ALL FIVE DITCHES HAD WATER IN THEM. AT THAT TIME WE WERE GETTING OUR MAXIMUM FLOW. SIGNIFICANTLY, WE DO NOT KNOW HOW THIS AMOUNT COMPARES TO THE FISH HAVEN WATER USERS COMPANY 29.6 CFS CLAIMED. FOR A PERIOD OF LESS THAN TWO WEEKS, A SMALL AMOUNT OF WATER WENT PAST THE FIVE DITCHES AND INTO BEAR LAKE VIA THE FISH HAVEN CREEK. AFTER THE TWO WEEK PERIOD AS WATER FLOW FELL, WE COULD AGAIN USE ALL THE WATER IN THE FIVE DITCHES. ALL TOO QUICKLY, WATER HAD TO BE TAKEN OUT OF SOME DITCHES TO ALLOW THE REMAINING DITCHES TO COMPLETE THEIR NORMAL ROTATIONAL "TURNS". EVEN IN DITCHES WHERE SOME WATER WAS AVAILABLE, THE FLOW WAS SO LOW THAT ONLY A SMALL PART OF EACH PIECE OF LAND RECEIVED WATER FROM THE DITCHES. AT THE

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END OF THE WATER SEASON, LESS THAN ONE STREAM WAS DIVIDED BETWEEN TWO DITCHES IN AN ATTEMPT TO PROVIDE WATER TO AS MANY LOCATIONS AS POSSIBLE.

DURING THE 2002 WATERING SEASON, WE AGAIN BEGAN THE IRRIGATION ROTATION USING ALL AVAILABLE WATER IN ONE DITCH, WHICH WAS #3. IN A FASHION SIMILAR TO THE 2001 SEASON, FLOW INCREASED TEMPORARILY FOR APPROXIMATELY THREE WEEKS, DURING WHICH TIME SUFFICIENT WATER WAS AVAILABLE TO FILL ALL FIVE DITCHES. HOWEVER, THE FLOW QUICKLY DIMINISHED AS THE SNOWMELT DISAPPEARED WITH UNSEASONABLY AND EARLY WARM TEMPERATURES. THEREFORE, OUR SEASON ENDED WITH ALL AVAILABLE WATER FLOWING THROUGH ONE DITCH. WATERING TURNS THROUGH ALL FIVE DITCHES WERE LIMITED TO TWO TURNS DURING THE ENTIRE SUMMER. THE HOWARD JOHNSON PROPERTY (WHICH IS THE ACREAGE UNDER THE SAM'S HOLLOW WATER COMPANY WATER SHARE) RECEIVED WATER FOR TWO ROTATIONS, A TOTAL OF 36 DAYS, WHICH IS CONSIDERABLY LESS THAN THE 102.3 DAYS WHICH THE SAM'S WATER COMPANY APPLICATION PROJECTS.

FINALLY, IT APPEARS THAT THE 2003 WATERING SEASON WILL FOLLOW THE PATTERN OF THE PRIOR TWO. WE BEGAN APRIL 15TH 2003 WITH WATER FLOWING THROUGH ONLY ONE DITCH, WHICH WAS #3. BY APPROXIMATELY MAY 16TH, WE WERE ABLE TO DISTRIBUTE WATER THROUGH ALL FIVE DITCHES. THAT IS THE CURRENT CIRCUMSTANCE. AGAIN, IT IS SURMISED THAT THE WATER FLOW WILL SOON DISSIPATE DUE TO SCARCE WINTER SNOWFALL, EARLY SPRING HIGH TEMPERATURES AND QUICK SNOWMELT.

WE ARE UNABLE TO ACCURATELY MEASURE WATER FLOW IN THE DITCHES DUE TO THE INADEQUATE DEVICE INSTALLED IN DITCH #2. WE ARE UNAWARE OF ANY REGULAR OR CONTINUING WATER MEASUREMENT BY ANYONE OTHER THAN MEMBERS OF THE BOARD OF DIRECTORS AND WE HAVE NOT ARRANGED MONITORING STANDARDS OR PROCEDURES WITH SAM'S HOLLOW. UNDER THE FISH HAVEN WATER USERS COMPANY AGREEMENT WITH SAM'S HOLLOW, WE ARE NOT OBLIGATED TO MEASURE OR MONITOR THE WATER FLOW. IT IS OUR UNDERSTANDING AND EXPECTATION THAT SAM'S HOLLOW IS RESPONSIBLE TO ESTABLISH THE ADEQUACY OF THE WATER FLOW TO SUBSTANTIATE THE WATER AVAILABILITY CONTAINED IN THEIR APPLICATION. THEY HAVE HAD SUFFICIENT TIME TO CORRECT THE INADEQUACY IN THE MONITORING DEVICES AND TO INSTITUTE WATER FLOW MEASUREMENT PROCEDURES. TO MY KNOWLEDGE, THEY HAVE FAILED TO DO SO. IN LIGHT OF THEIR INADEQUATE MONITORING AND

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DOCUMENTATION SUBSTANTIATING THEIR PROJECTIONS, THIS APPLICATION SHOULD BE DENIED.

IT IS CLEAR THAT SAM'S HOLLOW MUST BE RESPONSIBLE FOR ANY DIFFICULTIES EXPERIENCED BY HOMEOWNERS WITHIN ITS BOUNDARIES DUE TO INADEQUATE WATER SUPPLIES. THERE IS SIMPLY NOT ENOUGH SOLID, PROVEN INFORMATION BEFORE THE WATER RESOURCES BOARD TO APPROVE THIS APPLICATION. THE WATER RESOURCES BOARD SHOULD NOT PARTICIPATE IN PROVIDING LOTS OR HOMES TO INDIVIDUALS WHO ARE ILL INFORMED OF THE WATER SITUATION.

ANOTHER HISTORICAL FACT IS THAT THERE HAVE BEEN SUMMERS WHEN SOME OF THE FISH HAVEN WATER USERS COMPANY DITCHES DID NOT HAVE ANY WATER ALL SUMMER LONG. ON MANY OCCASIONS DURING LOW WATER YEARS, THE TWO UPPER DITCHES (UPPER NORTH AND UPPER SOUTH) ARE THE FIRST DITCHES TO BE WITHOUT WATER. IT SHOULD BE NOTED THAT UPPER SOUTH AND DITCH #2 SUPPLY WATER TO PROPERTIES LYING SOUTH OF THE FISH HAVEN CREEK. UPPER NORTH #1 AND #3 DITCH SUPPLY WATER TO THE PROPERTIES NORTH OF THE CREEK. OF PARTICULAR IMPORTANCE IN THIS APPLICATION, UPPER NORTH DITCH SUPPLIES 78% OF THE WATER TO SAM'S HOLLOW WATER COMPANY.

THE FISH HAVEN WATER USERS COMPANY DOES NOT HAVE AVAILABLE DATA OR ANY IDEA WHAT THE "AVERAGE USE" OF THE FISH HAVEN WATER USERS COMPANY IS. I QUESTION WHETHER IT IS ANYWHERE NEAR THE 29.6 CFS STATED IN OUR CLAIM. TO MY KNOWLEDGE, THERE HAS ONLY BEEN ONE YEAR IN THE LAST 20 WHEN ALL DITCHES WERE FULL DURING THE ENTIRE WATERING SEASON.

IN THE CURRENT APPLICATION, CHARLES BROCKWAY P.E. PH.D. MAINTAINS THAT THERE IS AVAILABLE ENOUGH WATER FROM THE WATER SHARES OWNED BY JOHNSON AND KEARL TO SUPPLY WATER TO THE NEW DEVELOPMENT. AGAIN, PLEASE NOTE THAT THERE IS NO AGREEMENT OR ARRANGEMENT WHEREBY KEARL WATER SHARES ARE AVAILABLE TO SAM'S HOLLOW UNDER ANY AGREEMENT WITH THE FISH HAVEN WATER USERS COMPANY. I AM SURE THERE IS NOT ENOUGH

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WATER TO SUPPORT THE JOHNSON DEVELOPMENT OF APPROXIMATELY 567 DWELLING UNITS. WE DO NOT KNOW HOW MANY UNITS OF THOSE PROPOSED ARE PLANNED ON THE KEARL LAND. ANYONE WHO LOOKS AT THE CREEK FLOW MUST REALIZE THAT THIS SMALL AMOUNT OF WATER CANNOT SUPPLY WATER FOR HUNDREDS OF HOMES. THE AMOUNT OF WATER REQUIRED FOR THIS PROJECT WOULD CLEARLY REPRESENT AN INCREASED WATER USAGE. ANY INCREASE OF WATER USE SHOULD AUTOMATICALLY BE DENIED.

DURING PAST SUMMERS A SMALL GROUP OF HOMEOWNERS IN THE "OLD FISH HAVEN RESORT" AREA FOUND THAT THEIR WELL DID NOT PROVIDE ENOUGH WATER TO CONTINUE THEIR REGULAR SERVICE. THIS RAISES QUESTIONS ABOUT WELL WATER AVAILABILITY IN THIS AREA.

IN VIEW OF THE ABOVE INFORMATION AND THE MANY UNANSWERED QUESTIONS CONCERNING WATER AVAILABILITY, I REQUEST THAT THE IDAHO DEPARTMENT OF WATER RESOURCES DENY THIS APPLICATION.

THANK YOU,

Leon V. Howell
Box 117
Fish Haven, Id 83787
208-945-2352

Receipt # E028774

RECEIVED
MAY 12 2003
Department of Water Resources
Eastern Region

Jody L. Williams, Esq.
Steven J. Vuyovich, Esq.
Holme Roberts & Owen, LLP
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111-2263
Telephone: (801) 521-5800

Attorneys for PacifiCorp dba Utah Power and Light

**BEFORE THE
DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO**

In the Matter of	)	
Application for Permit	)	Protest of PacifiCorp,
No. 11-7491	)	an Oregon Corporation, dba
Sam's Hollow Water Company	)	Utah Power
	)	
Applicant	)	Protestant
	)	

1. PacifiCorp, an Oregon corporation doing business in Idaho as Utah Power ("Protestant"), 1407 West North Temple, Suite 320, Salt Lake City, Utah 84116, hereby files this protest before the Department of Water Resources in the above-referenced proceeding. Please send notices and correspondence regarding this protest to:

Claudia Conder
Water Rights Administrator
PacifiCorp
1407 W No Temple Suite 320
Salt Lake City, UT 84116

with a copy to:

Jody L. Williams
Holme Roberts & Owen, LLP
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

2. Protestant owns water rights in the Bear River, the tributaries to Bear Lake, and Bear Lake decreed in the matter of *Utah Power & Light Company v. The Last Chance Canal Company, Limited, et al*, in Equity No. 203, July 14, 1920, and *Utah Power & Light Company v.*

Receipt # E028774

Richmond Irrigation Company, et al, February 21, 1922, as well as other rights in the Bear River below Applicant's proposed point of diversion.

3. Protestant has entered into many contracts with irrigators in Idaho and Utah along the Bear River, some of whom may be Protestants in this matter, for supply of supplemental storage water from Bear Lake when the natural flow of the Bear River is insufficient to satisfy existing water rights. However, during drought periods, high irrigation demands cause the level of Bear Lake to drop significantly, endangering Protestant's ability to continue to deliver supplemental irrigation water pursuant to its contracts.

4. Diversion of ground water adjacent to Bear Lake, such as that proposed by the Applicant, will directly impact PacifiCorp's water rights in Bear Lake. When Protestant is required to release Bear Lake storage water to satisfy its contracts, less water will be available to replace it in Bear Lake.

5. Applicant has not yet submitted an acceptable mitigation plan for the new diversion. Approval of Applicant's permit should be withheld until a satisfactory ground water mitigation plan has been submitted.

6. Protestant's supplemental storage water supply from Bear Lake is fully allocated, and Protestant will not offer a new supplemental storage water contract to Applicant. Even if some water is available from time to time to satisfy Applicant's proposed uses, the supply under such a late priority would be sporadic at best, probably usable for a short time only in the spring, and not adequate to sustain Applicant's needs throughout its requested annual period of use.

7. In addition to diminishing the quantity of Bear Lake water available to satisfy prior existing water rights and contracts, Protestant believes that granting the above-referenced application would conflict with the local public interest in the three following areas by permanently reducing inflow into Bear River: First, reliance by existing users on supplemental irrigation water delivered from Bear Lake will be impaired. Second, when the level of Bear Lake drops in extended droughts, recreation and other non-consumptive uses at the lake may be adversely affected. The Idaho State Parks & Recreation boat launch becomes unusable; the State park receives little use due to its distance from the water; facilities built with State funds are unusable, and visitor days and the attendant revenue they produce for the State may decrease.

Third, traditional habitat for indigenous fish in Bear Lake is decreased. Other wildlife species which depend on the lake will have similar problems due to habitat loss. The spread of noxious weeds and tamarisk is accelerated along the lake shore.

8. PacifiCorp encourages Applicant to finalize a Mitigation Plan in order to settle this Protest.

WHEREFORE, Protestant respectfully protests the above-referenced application and requests that approval be withheld until its Mitigation Plan has been approved.

DATED this 9th day of May, 2003.

PACIFICORP, dba UTAH POWER

By Jody L. Williams
Jody L. Williams, Attorney
Holme Roberts & Owen, LLP
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111-2263
Telephone: (801) 521-5800

MAILING CERTIFICATE

On this 9th day of May, 2003, I mailed a true and correct copy of the foregoing Protest, postage prepaid, to:

Idaho Department of Water Resources
Eastern Division
900 North Skyline Drive
Idaho Falls, Idaho 83402

Sam's Hollow Water Company
201 East Center Street
Pocatello ID 83201

Jim Kimbal
P.O. Box 145
St. Charles, Idaho 83272

Bear River Water Users Association
c/o J. Kent Horton
597 Wasatch Blvd.
Smithfield, Utah 84335

Brent Rose, Esq.
Clyde, Snow, Sessions & Swenson
201 South Main Suite 1300
Salt Lake City, Utah 84111

Cheryl C. Williss, Chief
Division of Water Resources
P.O. Box 25486
Denver Federal Building Mail Stop 60189
Denver, Colorado 80225

Randall C. Budge, Esq.
Racine, Olson, Nye, Cooper & Budge
P O Box 1391
Pocatello, ID 83204-1391

Barbara Wallin



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION
April 30, 2003

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

SAMS HOLLOW WATER COMP
201 E CENTER ST
POCATELLO ID 83201

RE: Application for Permit No 11-7491

Dear Applicant(s):

The Department of Water Resources acknowledges receipt of your water right application. Please refer to the above referenced number in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the News Examiner on May 7 and 14, 2003. Submittal of protests to this application will be allowed for a period ending ten days after the second publication.

If the application is protested you will be sent a copy of the protest(s). All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our State Office in Boise for final processing. The State Office will notify you of any action taken on the application and will send you a copy of the permit if approved.

Please feel free to contact this office if you have any questions.

Sincerely,

Harold W Jones
Water Right Supervisor

HWJ:sc



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 30, 2003

Legal Notice Department
NEWS-EXAMINER
PO BOX 278
MONTPELIER ID 83254

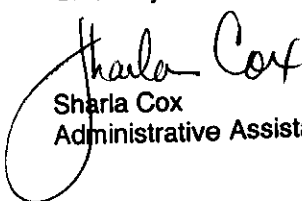
RE: Application for Permit No. 11-7491

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before May 27, 2003. Your cooperation is appreciated.

Sincerely


Sharla Cox
Administrative Assistant

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

11-7491

SAMS HOLLOW WATER COMP
201 E CENTER ST
POCATELLO ID 83201

Point(s) of Diversion: SWNE S10 T16S R43E, BEAR LAKE County
Source GROUND WATER

Use: DOMESTIC 01/01 To 12/31 1.22 CFS
Total Diversion: 1.22 CFS

Date Filed: 05/21/2002

Place Of Use: DOMESTIC

T16S R43E S10	NENE NWNE SWNE SENE
T16S R43E S11	NWNE SWNE NENW NWNW
T16S R43E S2	NESW NWSW SWSW SESW NWSE

Applicants propose to give up additional shares in the Fish Haven Irrigation Company as mitigation. This is the same type of plan proposed for application #11-7481. A copy of the plan is available upon request.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before May 27, 2003. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published on May 7 and 14, 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 18, 2003

ID Dept of Environmental Quality
444 Hospital Way #300
Pocatello ID 83204

RE: Application for Permit #11-07491 (Sams Hollow – Phase II)

Dear Sir:

We are enclosing a copy of the application (s) that may be of interest to your department. Please review the application (s) and submit any comments you may have to our Department as soon as possible. This application will be advertised until May 7 and 14, 2003. The last date of protest is May 27, 2003, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Respectfully submitted,

A handwritten signature in cursive script that reads "Harold W. Jones".

Harold W. Jones
Water Right Supervisor

HWJ: sc

Enc.



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 18, 2003

Leon Howell
2764 US Highway
Fish Haven ID 83287

RE: Application for Permit #11-07491 (Sams Hollow – Phase II)

Dear Leon:

We are enclosing a copy of the application (s) that may be of interest to your department. Please review the application (s) and submit any comments you may have to our Department as soon as possible. This application will be advertised until May 7 and 14, 2003. The last date of protest is May 27, 2003, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Respectfully submitted,


Harold W. Jones
Water Right Supervisor

HWJ: sc

Enc.



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EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 18, 2003

Cheryl C Williss
Chief, Division of Water Resources
United States Department of the Interior
PO Box 25486
Denver CO 80225-0486

RE: Application for Permit #11-07491 (Sams Hollow – Phase II)

Dear Cheryl:

We are enclosing a copy of the application (s) that may be of interest to your department. Please review the application (s) and submit any comments you may have to our Department as soon as possible. This application will be advertised until May 7 and 14, 2003. The last date of protest is May 27, 2003, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Respectfully submitted,

Harold W. Jones
Water Right Supervisor

HWJ: sc

Enc.



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EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 18, 2003

Holme Roberts & Owen, LLP
Jody L Williams
299 S Main St Ste 1800
Salt Lake City UT 84111

RE: Application for Permit #11-07491 (Sams Hollow – Phase II)

Dear Jody:

We are enclosing a copy of the application (s) that may be of interest to your department. Please review the application (s) and submit any comments you may have to our Department as soon as possible. This application will be advertised until May 7 and 14, 2003. The last date of protest is May 27, 2003, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Respectfully submitted,

Harold W. Jones
Water Right Supervisor

HWJ: sc

Enc.



State of Idaho

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EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 25, 2002

Randall Budge
P.O. Box 1391
Pocatello, Idaho 83204-1391

Mr. Budge:

I have received an application for Sam's Hollow Water Company, Phase II that you submitted for your clients.

Since this application proposes mitigation I would have to have that signed mitigation agreement prior to advertising as that agreement should be available for review.

I have already had a request for said agreement relating to the Phase I advertisement and could not comply. I will therefore hold the Phase II advertising until I have the fully signed mitigation agreement.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. W. Jones'.

Harold W. Jones
Water Resource Supervisor

LAW OFFICES OF

**RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED**

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SCOTT J. SMITH

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TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

BOISE OFFICE

CONRAD J. AIKEN

101 SOUTH CAPITOL
BOULEVARD
U.S. BANK PLAZA, SUITE 202
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

RECEIVED

JAN 11 2002

Department of Water Resources
Eastern Region

January 8, 2002

Harold Jones
Eastern Division
Idaho Department of Water Resources
900 N. Skyline Drive
Idaho Falls, Idaho 83402

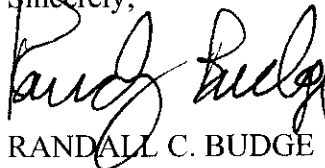
Re: *Sam's Hollow Water Co. - Application for Permit
(Bear Lake Haven Phase II)*

Dear Harold:

Enclosed for filing and processing is Application for Water Permit regarding Sam's Hollow Water Company, Bear Lake Have Phase II, with attached map and narrative. Also enclosed is our check in the amount of \$290 for filing fee.

If you have any questions or if I can be of further assistance, please contact me.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosures

cc: C.E. Brockway (w/o encls.)
Johnson Development Company (w/encls.)
A. A. Hudson (w/encls.)