

**THIS WATER RIGHT APPLICATION IS IN THE
PROCESS OF APPEAL TO THE DISTRICT COURT**

Chris Pein, d/b/a/ Gibson Jack Joint Venture,
a/k/a Wildhorse Ridge Subdivision

Bannock County Case No. CVOC 97-02001

See Phil Rassier regarding this appeal.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 29-08175, 29-08176,)
29-08177, 29-08178, 29-08179,)
29-08180, 29-08181, 29-08182,)
29-08183 AND 29-08184 IN THE)
NAME OF GIBSON JACK JOINT)
VENTURE AKA WILDHORSE RIDGE)
SUBDIVISION)

**ORDER DENYING
PETITIONS FOR RECONSIDERATION**

On October 30, 1997, the Director of the Idaho Department of Water Resources (Director) issued an Amended Final Order in connection with the above captioned matter.

On November 13, 1997, Gibson Jack Joint Venture aka Wildhorse Ridge Subdivision filed a petition for reconsideration (petition) of the Amended Final Order with the department.

On November 14, 1997, protestants Everett D. Diller and Richard M. Hollingsworth also filed a petition for reconsideration (petition) of the Amended Final Order with the department.

The Director has reviewed the petitions and has determined that the petitions do not present any additional information for the Director to consider than was available to the Director when issuing his Amended Final Order.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Petitions for Reconsideration of the Director's Amended Final Order are **DENIED**.

Dated this 25th day of November, 1997.



KARL J. DREHER
Director

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CERTIFICATE OF SERVICE

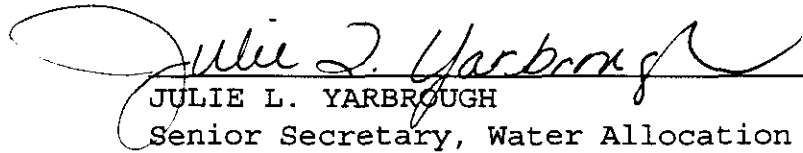
I DO HEREBY CERTIFY that on the 28th day of November, 1997, the above and foregoing document was served upon the following, via certified mail, by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

F RANDALL CLINE
F RANDALL CLINE CHARTERED
PO BOX 397
427 MAIN STE L
POCATELLO ID 83204

CLARK KELLY
9685 HEATHER RD
POCATELLO ID 83204

RICHARD HOLLINGSWORTH
9502 GIBSON JACK
POCATELLO ID 83204

EVERETT DILLER
2917 N STEPHANIE RD
POCATELLO ID 83204


JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

State of Idaho
Department of Water Resources
Permit To Appropriate Water

NO. 29-08184

Proposed Priority: July 12, 1996

Maximum Diversion Rate:

0.05 CFS

This is to certify, that GIBSON JACK JOINT VENTURE

PO BOX R

POCATELLO ID 83206

has applied for a permit to appropriate water from: GROUNDWATER

and a permit is APPROVED for development of water as follows:

BENEFICIAL USE

PERIOD OF USE

RATE OF DIVERSION

DOMESTIC

01/01 to 12/31

0.05 CFS

LOCATION OF POINT(S) OF DIVERSION:

NWNW , Sec. 19, Township 07S, Range 35E
BANNOCK County

PLACE OF USE: DOMESTIC

TWN RGE SEC

07S 35E 19

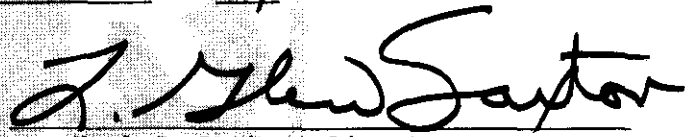
NWNW

CONDITIONS OF APPROVAL AND REMARKS

1. See Amended Final Order for conditions and limitations of use of water under this approval.

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

29th day of October, 1997.


for
Karl J. Dreher, Director

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

IN THE MATTER OF APPLICATION FOR	)	
PERMIT NOS. 29-08175, 29-08176, 29-08177,	)	AMENDED FINAL ORDER
29-08178, 29-08179, 29-08180, 29-08181,	)	
29-08182, 29-08183, 29-08184 IN THE	)	
NAME OF GIBSON JACK JOINT VENTURE,	)	
a.k.a. WILDHORSE RIDGE SUBDIVISION.	)	
_____	)	

On July 12, 1996, Gibson Jack Joint Venture (applicant) filed ten applications for permit to appropriate water for domestic purposes with the Department of Water Resources (department). Guy Anderst, Chris Pien and Tom Iverson are partners in Gibson Jack Joint Venture. The applications were protested by Richard Hollingsworth. Everett Diller and Clark Kelly also filed untimely protests. The department granted intervenor status to Everett Diller and Clark Kelly. Richard Hollingsworth, Everett Diller and Clark Kelly will hereafter be referred to as "protestants."

A hearing was conducted on October 22, 1996, in Pocatello, Idaho. At the end of the day, the protestants had not presented their evidence. The hearing was continued and completed on October 30, 1996. A Recommended Order was issued on February 4, 1997. Exceptions were filed by Richard Hollingsworth and Everett Diller.

A Final Order was issued on July 11, 1997. The Final Order denied the application because the development would injure other water rights, the water supply is insufficient for the proposed uses, and the use proposed by the applications is not in the public interest because the quantity of water under existing water rights would be reduced. On July 28, 1997, the applicant filed a Petition for Reconsideration of the Final Order. The petition was not timely filed, and the director denied the petition for reconsideration. However, the director exercised his discretion to withdraw the Final Order to allow further review of several issues raised by the applicants. A partial transcript of the testimony of John Welhan and Sherl Chapman, expert witnesses for the applicant, was also prepared.

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ANALYSIS OF EXPERT TESTIMONY

Finding of Fact No. 12 of the Final Order misstates John Welhan's testimony. John Welhan did not testify that wells east and north of the proposed subdivision could experience problems during low water years.

Both John Welhan (Welhan) and Sherl Chapman (Chapman) concluded that there is sufficient water in the aquifer for the domestic uses proposed by the applications, including one-half (½) acre of irrigation per lot. However, background testimony and evidence either weakly supported or conflicted with the conclusion that there is sufficient water. For instance, Welhan testified that "changes in storage from ground water levels on the Gibson Jack bench were significant, both seasonally and over the period of the drought. . . ." (Transcript, pp. 5-6).

Welhan further testified:

It [water] is coming from storage in the aquifer itself, because the ability of that aquifer appears to be limited as far as providing an amount of water moving through it that would not be sufficient to rely on for any extended period of time. What we do know is that there is an awful lot more water, ten times more water, that is available right now in storage that [sic] is being exploited right now by existing homes, and that causes a seasonal decline in the rebound on a yearly basis. (Transcript, pp. 6-7).

[T]he storage capacity of the aquifer is the primary concern. It is the thing we know least about and the source of my caveat to my original opinion about the ability of the system to supply the required amount of water. (Transcript, p. 12).

[T]he amount of water that actually flows through is a tenth of what people are withdrawing from storage. So the potential of the aquifer is extremely important. It is what you depend on today and what you have depended upon as an existing well owner up there for your water on a year round basis to carry you through the summer months and to carry you through the drought years. There is only a certain amount of water that gets recharged through that system and for the rest of the time of the year you are pulling water out of that bank account. (Transcript, pp. 29-30).

[Y]ou are drawing that water ninety (90) percent or more of it from storage. And if you didn't have that spring recharge every year, you wouldn't even last more than a year. (Transcript, p. 34).

Welhan's testimony implies that sufficient water is available for domestic use during high and average precipitation years. It also implies that there is insufficient water for the proposed uses,

including landscape irrigation, during low precipitation years. During low precipitation years, the proposed uses, including landscape irrigation, will injure other water users.

The director agrees with the hearing officer that limited household use would not injure other water users. An approval by the Department of Water Resources, however, must be realistically enforceable, and future homeowners must be apprised of the limited use of water. The water right can be approved with the following conditions:

1. The subdivision covenants and restrictions must limit water use to in-house use and water for domestic animals only as set forth in the water right permit.
2. A homeowners association must be formed by the developer and the association must actively enforce bylaws which set forth the water use restrictions.
3. All outside spigots on homes built in the subdivision must be contained in breakable enclosures and are only to be used in an emergency.
4. All deeds executed by the permit holders to original lot owners must contain a restriction that the water right is limited to in-house use and water for domestic animals only as set forth in the water right permit.
5. Diversion of water for irrigation or any other purpose outside the culinary and domestic animal uses authorized, is cause for the director of the department to prevent delivery of water from a well until the illegal use is curtailed, civil penalties (if any) are paid, and mitigation (if any) for injury to senior water rights is made as required by the director.

If the applicant wants to seek water for irrigation or other uses, it may conduct additional studies that demonstrate sufficient water is available and may reapply to appropriate water for those purposes in the future.

ANALYSIS OF PROTESTANTS EXCEPTIONS

Richard Hollingsworth (Hollingsworth) asked for oral argument regarding the exceptions filed. The issues raised by the exceptions do not justify granting oral argument.

Hollingsworth and Everett Diller (Diller) argue three main themes in their exceptions: (1) there is insufficient water to supply domestic use for homes and one-half acre of irrigation as proposed by the applicants; (2) the recommended order conflicts with an earlier denial by the Bannock County Commission of a subdivision proposal that was affirmed by Judge Wallace M. Transtrum on appeal; and (3) if there are water shortages in the future, who will regulate the diversions of water to insure that earlier-in-time-priority water right holders are protected?

Sufficiency of Water Supply

Finding of fact no. 26 of the recommended order states that "... in-house culinary use will not significantly reduce water supplies available to holders of earlier-in-time water rights, because the use is essentially non-consumptive." Conclusion of law nos. 5 and 6 of the recommended order state that "[t]otal fulfillment of the expectations of the applicant's successors would injure earlier-in-time water uses" but "[t]here is sufficient water for strict, limited, in-house culinary use and water consumption for stock associated with future homes that will be built" The order portion of the recommended order approved "diversion for domestic purposes for in-house culinary use and direct water consumption by stock associated with a domestic dwelling only." The recommended order denied the request to irrigate any portion of the lots in the subdivision proposed by the applicants.

The provisions of the Recommended Order when clarified are adequate to prevent injury to prior rights because the consumption of water for in-house culinary use and for domestic animals will be insignificant.

Conflict with Prior District Court Decision

A subdivision was proposed several years ago at the location described by the pending applications for permit. The Bannock County Commission denied the subdivision proposal, and the denial was appealed to the district court. Judge Wallace Transtrum upheld the Bannock County Commission's decision denying the subdivision proposal. After the decision, the owners of the property submitted another proposal to Bannock County/City of Pocatello that was approved. At the time of the hearing, the decision by the local governments was being appealed again, this time by those who were opposed to the subdivision.

The first decision by the district court does not forever prevent the owner of property from proposing another subdivision that is acceptable to the local governments. The prior decision of the district court does not prevent the department from approving a water right after the local governments approved another subdivision plan.

Regulation of Water Use

Sufficient regulation of water use will occur by requiring the additional conditions of the Amended Final Order.

Based on the testimony and evidence presented at the hearing, the director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, and 29-08184 propose diversion of ground water to serve the domestic needs of up to four residential homes per domestic well.

2. The applications propose to cumulatively supply water to a 119-acre, 38-lot subdivision in the Gibson Jack Creek drainage, tributary to the Portneuf River, located southeast of the City of Pocatello. The proposed points of diversion and places of use are all located in Section 19, T7S, R35E, B.M. The exact location of the proposed points of diversion and places of use within Section 19 are described as follows:

Water Right No.	Point of Diversion	Place of Use
29-08175	NENW	NENW
29-08176	SENW	SENW
29-08177	SWNW	SWNW
29-08178	SWNW	SWNW
29-08179	SWNW	SWNW
29-08180	NENW	NENW
29-08181	NENW	NENW
29-08182	NWNW	NWNW
29-08183	NWNW	NWNW
29-08184	NWNW	NWNW

3. The 119-acre parcel was previously considered for a subdivision in the mid-1980's. The Bannock County Commission rejected the proposal, and the rejection was confirmed by the district court of the State of Idaho.

4. The applicant proposed a new subdivision to both the City of Pocatello and Bannock County. The proposal was approved by both the city and the county commission. The approvals were being appealed at the time of the hearing for the proposed water rights.

5. The applicant originally proposed one well and one septic tank for each residence. After initially analyzing the potential for well interference, the applicant decided that one well for every three or four residences would reduce the potential for local well interference and would also promote better maintenance by the owners. However, whether one well is drilled for each residence, or whether one well is drilled for every three or four residences, has no effect on whether the water supply is sufficient or insufficient for the purpose for which it is sought to be appropriated.

6. Each of the residential lots within the subdivision would be two to three acres in size. The applications propose one-half acre of irrigation per residential lot. The remainder of each lot would remain in natural vegetation.

7. The protestants are owners of nearby residences and lots from three to sixteen acres in size. The protestants allege that approval of the applications and diversion of water as proposed would result in a reduction in ground water levels and depletion of a limited aquifer to their injury.

8. Because of concerns of water availability, the applicant drilled a test well referred to as the Iverson well. The Iverson well is located in the SENW, Section 19, T07S, R35E. The applicants hired John Welhan (Welhan), a professional geologist to determine the effect pumping would have on other wells and to generally determine ground water availability in the Gibson Jack Creek drainage.

9. The Iverson well was tested on January 11, 1996. It pumped between 20 and 38 gallons per minute for 7.3 hours, resulting in a drawdown of 136 feet in the Iverson well.

10. A recording device was placed in a well owned by Chad Nelson. The Nelson well is located approximately one-quarter mile away from the Iverson well. The water level in the Nelson well declined 0.02 feet during pumping of the Iverson well.

11. Based on the well test, Welhan estimated the aquifer's water holding capacity, its transmissivity, and the possibility of interference with other wells. He concluded that pumping from the wells proposed by the applicants would not cause local drawdown interference if the proposed wells are constructed at least 600 feet from other wells. He also concluded that most of the ground water is diverted from storage that recharges annually to an aquifer of limited capacity. He concluded that pumping during the irrigation season decreases the ground water level in the aquifer, but precipitation during the non-irrigation months recharges the aquifer and refills the aquifer to the approximate level of the previous year.

12. Welhan's report speculates that there may be a shallow and a deep aquifer, and that some of the water users presently pumping from the shallow aquifer might be able to pump from the deep aquifer if they deepened their wells. However, Welhan was uncertain about the existence or capacity of the deep aquifer.

13. Welhan stated that during normal and high precipitation years, the precipitation would recharge the storage in the aquifer to satisfy existing uses and the proposed use. He also testified that during low water years, particularly during an extended drought, there may not be sufficient water for the proposed use.

14. Sherl Chapman (Chapman), a geologist representing the applicant, testified that he is familiar with water levels in the area, and that he had also derived some aquifer values

based on tests he had conducted. He concluded that there is sufficient water for ten domestic wells, each with a production rate of between 25 and 35 gallons per minute. He concluded that the aquifer would not produce sufficient water for irrigation of all the lands within the proposed subdivision.

15. Both Chapman and Welhan testified that there would be sufficient water for the proposed use. Testimony of Welhan either conflicted with this conclusion, or was uncertain to support the conclusion. The conclusion of Chapman was not supported by sufficient evidence.

16. Several owners of residential or agricultural properties surrounding the proposed place of use testified regarding declining ground water levels in existing wells. The locations of most of the wells are depicted on Figure 1 of applicant's exhibit no. 4.

17. Richard Hollingsworth testified that water levels in his domestic well have declined 63 feet based on comparing a measurement in July 1978 to a measurement in July 1993. He testified that he cannot irrigate his one-half acre of lawn during the summer. He also testified that sometimes there is insufficient water to flush a toilet during the summer.

18. Everett Diller (Diller) stated that he had lived in the Gibson Jack Creek area since 1978. He testified the water supply was good until a few years ago. He testified he can only irrigate a 7200 square foot front lawn in the summer with his domestic well.

19. Diller stated that he also owns an irrigation well that irrigates approximately four acres. Diller testified that he has not experienced any pumping problems with his irrigation well. The irrigation well is 265 feet deep, approximately 100 feet deeper than the domestic well.

20. Michael Oliver (Oliver) testified that a domestic well was drilled on his property in 1991 to a depth of 180 feet. During 1994, the well was pumping air, and Oliver redrilled his well in December 1994 to a depth of 300 feet. Oliver did not testify that he experienced any water shortages after redrilling his domestic well. Oliver irrigates a 5,000 square foot lawn.

21. Harvey Pickens (Pickens) testified that he owns both a domestic well and an irrigation well located south of the proposed place of use. Both of the wells are approximately 300 feet deep.

22. Pickens testified that his domestic well was drilled in 1969. Pickens purchased the property in 1972. Pickens testified that his domestic well produced sufficient water during the first few years. During the last six to eight years, however, the domestic well has not produced sufficient water for domestic use.

23. Pickens' irrigation well was drilled in 1992. Pickens testified that in the spring of 1996, he could only pump for four hours. In the fall of 1996, he could only pump for 30 minutes.

24. Mary Harling (Harling) owns a well that is 115 feet deep. Harling testified that when her domestic well was drilled in 1978, the water level was within 50 feet of the land surface. Since 1978, Harling has lowered her pump 20 feet, and in 1996, began experiencing problems again. Harling testified that during late 1996, she could not run a clothes washer and a dish washer at the same time because her pump would not produce enough water.

25. Michael Nix testified his well was drilled in 1986 to a depth of 260 feet. Larry Bybee testified he owns a domestic well drilled to a depth of 180 feet. Both testified about declines in ground water levels and difficulty in diverting sufficient water.

26. The testimony of both the experts retained by the applicant and the protestants' witnesses established that there is water available for appropriation during normal-to-high precipitation years, at least during the early part of the summer. Testimony established that during periods of drought, the limited ground water supply in the Gibson Jack drainage may not supply sufficient water for both the proposed use and existing uses. Domestic uses, particularly in-house culinary use, are not amenable to curtailment during periods when the water supply is not adequate.

27. During periods of low precipitation, the domestic uses proposed would remove water from the system that should be delivered to earlier-in-time water right holders.

28. Diversion of water by a new domestic water user for in-house culinary use and water for domestic animals would not significantly reduce water supplies available to holders of earlier-in-time water rights.

29. The protestants stipulated that the applicant has sufficient financial resources to develop the project and that the applications are not proposed for purposes of speculation or delay.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A provides, in pertinent part, as follows:

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 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, where the local public interest is defined as the affairs of the people in the

area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor

2. The applicant bears the burden of proof regarding the criteria set forth in Idaho Code § 42-203A.

3. Domestic water users are intolerant of deficiencies in water supply. Most domestic water users expect to be able to irrigate some landscaping associated with their homes. Domestic water users have an almost absolute expectation that there is sufficient water for in-house culinary use; water to drink, to shower with, to wash clothing, or to flush a toilet.

4. These absolute expectations are held by individuals who may buy lots from the applicant, by the protestants, and by other water users. Present water users are already experiencing in-house culinary water delivery problems and difficulty in irrigating landscaping associated with their homes.

5. Future lot owners should not be mislead into believing that an approval of a water right permit will satisfy their absolute expectation of delivery of domestic water on demand. At times, there will not be sufficient water to satisfy their expectations and the expectations of domestic and irrigation users with earlier uses and earlier priority water rights. Total fulfillment of the expectations of the applicant's successors would injure earlier-in-time water uses.

6. There is sufficient water for strict, limited, in-house culinary use and water for domestic animals associated with future homes that will be built in the proposed development.

7. According to the testimony, there is insufficient water for irrigation of any land in the proposed place of use.

8. The applicant has sufficient financial resources to develop the proposed project.

9. The applicants are not seeking a permit for speculation or delay.

10. The use proposed by the applications is in the public interest, if limited to in-house culinary use and water for domestic animals, and is consistent with principles of conservation of the water of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-8183, and 29-08184 are

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PARTIALLY APPROVED to allow diversion for domestic purposes limited to in-house culinary use and water for domestic animals.

IT IS FURTHER ORDERED that the permits are conditioned as follows:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before January 1, 2003.
2. The approved permits are subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. The permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
5. A well drilled pursuant to this permit must be located at least 600 feet from any existing well. Well spacing closer than 600 feet must be approved by the Department of Water Resources.
6. The subdivision covenants and restrictions must limit water use to in-house culinary use and water for domestic animals only.
7. A homeowners association must be formed by the developer and actively enforce bylaws which set forth the water use restrictions.
8. All outside spigots on homes built in the subdivision must be contained in breakable enclosures and are only to be used in an emergency.
9. All deeds executed by the permit holders to original lot owners must contain a restriction that the water right is limited to in-house use and water for domestic animals.
10. Diversion of water for irrigation or any other purpose outside the authorized culinary use and water for domestic animals is cause for the director of the department to prevent delivery of water from a well until the illegal use is curtailed, civil penalties (if any) are paid, and mitigation (if any) for injury to senior water rights is made as required by the director.

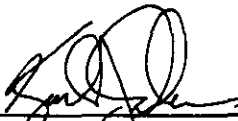
IT IS FURTHER ORDERED that points of diversion and places of use within Wildhorse Ridge Subdivision are further defined as:

1. Well #1 is located between Lots 1 & 2, and serves Lots 1, 2, 19, and 20 under Permit No. 29-08175.
2. Well #2 is located between Lots 3 & 17, and serves Lots 3, 4, 17, and 18 under Permit No. 29-08176.
3. Well #3 is located at the common corner of Lots 5, 6, 13, and 14 , and serves Lots 5, 6, 13, and 14 under Permit No. 29-08177.
4. Well #4 is located within Lot 9, and serves Lots 7, 8, and 9 under Permit No. 29-08178.
5. Well #5 is located between Lots 11 & 12, and serves Lots 10, 11, 12, and 15 under Permit No. 29-08179.
6. Well #6 is located between Lots 16 & 24, and serves Lots 16, 24, and 25 under Permit No. 29-08180.
7. Well #7 is located between Lots 23 & 37 and serves Lots 21, 22, 23, and 37 under Permit No. 29-08181.
8. Well #8 is located between Lots 33 & 34, and serves Lots 33, 34, 35, and 36 under Permit No. 29-08182.
9. Well #9 is located between Lots 30 & 31, and serves Lots 29, 30, 31, and 32 under Permit No. 29-08183.
10. Well #10 is located between Lots 26 & 27, and serves Lots 26, 27, and 28 under Permit No. 29-08184.

IT IS FURTHER ORDERED that the use of water under this permit for purposes other than in-house culinary use and water for domestic animals is hereby DENIED.

IT IS FURTHER ORDERED that if the applicants want to seek water for irrigation or other uses, they may conduct additional studies that demonstrate sufficient water is available and may reapply for appropriation in the future for those purposes.

Dated this 29th day of October, 1997.



KARL J. DREHER

Director

CERTIFICATE OF SERVICE

I do hereby certify that on this 30th day of October, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing AMENDED FINAL ORDER to the following:

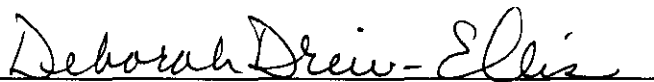
F. Randall Cline
F. Randall Cline, Chartered
P.O. Box 397
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Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, ID 83402

Richard Hollingsworth
9502 Gibson Jack
Pocatello, ID 83204

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204

Everett Diller
2917 N. Stephanie Rd.
Pocatello, ID 83204



DEBORAH DREW-ELLIS
Legal Secretary

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Welhan further testified:

It [water] is coming from storage in the aquifer itself, because the ability of that aquifer appears to be limited as far as providing an amount of water moving through it that would not be sufficient to rely on for any extended period of time. What we do know is that there is an awful lot more water, ten times more water, that is available right now in storage that [sic] is being exploited right now by existing homes, and that causes a seasonal decline in the rebound on a yearly basis. (Transcript, pp. 6-7).

[T]he storage capacity of the aquifer is the primary concern. It is the thing we know least about and the source of my caveat to my original opinion about the ability of the system to supply the required amount of water. (Transcript, p. 12).

[T]he amount of water that actually flows through is a tenth of what people are withdrawing from storage. So the potential of the aquifer is extremely important. It is what you depend on today and what you have depended upon as an existing well owner up there for your water on a year round basis to carry you through the summer months and to carry you through the drought years. There is only a certain amount of water that gets recharged through that system and for the rest of the time of the year you are pulling water out of that bank account. (Transcript, pp. 29-30).

[Y]ou are drawing that water ninety (90) percent or more of it from storage. And if you didn't have that spring recharge every year, you wouldn't even last more than a year. (Transcript, p. 34).

Welhan's testimony implies that sufficient water is available for domestic use during high and average precipitation years. It also implies that there is insufficient water for the proposed uses,

including landscape irrigation, during low precipitation years. During low precipitation years, the proposed uses, including landscape irrigation, will injure other water users.

The director agrees with the hearing officer that limited household use would not injure other water users. An approval by the Department of Water Resources, however, must be realistically enforceable, and future homeowners must be apprised of the limited use of water. The water right can be approved with the following conditions:

1. The subdivision covenants and restrictions must limit water use to in-house use and water for domestic animals only as set forth in the water right permit.
2. A homeowners association must be formed by the developer and the association must actively enforce bylaws which set forth the water use restrictions.
3. All outside spigots on homes built in the subdivision must be contained in breakable enclosures and are only to be used in an emergency.
4. All deeds executed by the permit holders to original lot owners must contain a restriction that the water right is limited to in-house use and water for domestic animals only as set forth in the water right permit.
5. Diversion of water for irrigation or any other purpose outside the culinary and domestic animal uses authorized, is cause for the director of the department to prevent delivery of water from a well until the illegal use is curtailed, civil penalties (if any) are paid, and mitigation (if any) for injury to senior water rights is made as required by the director.

If the applicant wants to seek water for irrigation or other uses, it may conduct additional studies that demonstrate sufficient water is available and may reapply to appropriate water for those purposes in the future.

ANALYSIS OF PROTESTANTS EXCEPTIONS

Richard Hollingsworth (Hollingsworth) asked for oral argument regarding the exceptions filed. The issues raised by the exceptions do not justify granting oral argument.

Hollingsworth and Everett Diller (Diller) argue three main themes in their exceptions: (1) there is insufficient water to supply domestic use for homes and one-half acre of irrigation as proposed by the applicants; (2) the recommended order conflicts with an earlier denial by the Bannock County Commission of a subdivision proposal that was affirmed by Judge Wallace M. Transtrum on appeal; and (3) if there are water shortages in the future, who will regulate the diversions of water to insure that earlier-in-time-priority water right holders are protected?

Sufficiency of Water Supply

Finding of fact no. 26 of the recommended order states that “. . . in-house culinary use will not significantly reduce water supplies available to holders of earlier-in-time water rights, because the use is essentially non-consumptive.” Conclusion of law nos. 5 and 6 of the recommended order state that “[t]otal fulfillment of the expectations of the applicant’s successors would injure earlier-in-time water uses” but “[t]here is sufficient water for strict, limited, in-house culinary use and water consumption for stock associated with future homes that will be built” The order portion of the recommended order approved “diversion for domestic purposes for in-house culinary use and direct water consumption by stock associated with a domestic dwelling only.” The recommended order denied the request to irrigate any portion of the lots in the subdivision proposed by the applicants.

The provisions of the Recommended Order when clarified are adequate to prevent injury to prior rights because the consumption of water for in-house culinary use and for domestic animals will be insignificant.

Conflict with Prior District Court Decision

A subdivision was proposed several years ago at the location described by the pending applications for permit. The Bannock County Commission denied the subdivision proposal, and the denial was appealed to the district court. Judge Wallace Transtrum upheld the Bannock County Commission’s decision denying the subdivision proposal. After the decision, the owners of the property submitted another proposal to Bannock County/City of Pocatello that was approved. At the time of the hearing, the decision by the local governments was being appealed again, this time by those who were opposed to the subdivision.

The first decision by the district court does not forever prevent the owner of property from proposing another subdivision that is acceptable to the local governments. The prior decision of the district court does not prevent the department from approving a water right after the local governments approved another subdivision plan.

Regulation of Water Use

Sufficient regulation of water use will occur by requiring the additional conditions of the Amended Final Order.

Based on the testimony and evidence presented at the hearing, the director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, and 29-08184 propose diversion of ground water to serve the domestic needs of up to four residential homes per domestic well.

2. The applications propose to cumulatively supply water to a 119-acre, 38-lot subdivision in the Gibson Jack Creek drainage, tributary to the Portneuf River, located southeast of the City of Pocatello. The proposed points of diversion and places of use are all located in Section 19, T7S, R35E, B.M. The exact location of the proposed points of diversion and places of use within Section 19 are described as follows:

Water Right No.	Point of Diversion	Place of Use
29-08175	NENW	NENW
29-08176	SEnw	SEnw
29-08177	SWNW	SWNW
29-08178	SWNW	SWNW
29-08179	SWNW	SWNW
29-08180	NENW	NENW
29-08181	NENW	NENW
29-08182	NWNW	NWNW
29-08183	NWNW	NWNW
29-08184	NWNW	NWNW

3. The 119-acre parcel was previously considered for a subdivision in the mid-1980's. The Bannock County Commission rejected the proposal, and the rejection was confirmed by the district court of the State of Idaho.

4. The applicant proposed a new subdivision to both the City of Pocatello and Bannock County. The proposal was approved by both the city and the county commission. The approvals were being appealed at the time of the hearing for the proposed water rights.

5. The applicant originally proposed one well and one septic tank for each residence. After initially analyzing the potential for well interference, the applicant decided that one well for every three or four residences would reduce the potential for local well interference and would also promote better maintenance by the owners. However, whether one well is drilled for each residence, or whether one well is drilled for every three or four residences, has no effect on whether the water supply is sufficient or insufficient for the purpose for which it is sought to be appropriated.

6. Each of the residential lots within the subdivision would be two to three acres in size. The applications propose one-half acre of irrigation per residential lot. The remainder of each lot would remain in natural vegetation.

7. The protestants are owners of nearby residences and lots from three to sixteen acres in size. The protestants allege that approval of the applications and diversion of water as proposed would result in a reduction in ground water levels and depletion of a limited aquifer to their injury.

8. Because of concerns of water availability, the applicant drilled a test well referred to as the Iverson well. The Iverson well is located in the SENW, Section 19, T07S, R35E. The applicants hired John Welhan (Welhan), a professional geologist to determine the effect pumping would have on other wells and to generally determine ground water availability in the Gibson Jack Creek drainage.

9. The Iverson well was tested on January 11, 1996. It pumped between 20 and 38 gallons per minute for 7.3 hours, resulting in a drawdown of 136 feet in the Iverson well.

10. A recording device was placed in a well owned by Chad Nelson. The Nelson well is located approximately one-quarter mile away from the Iverson well. The water level in the Nelson well declined 0.02 feet during pumping of the Iverson well.

11. Based on the well test, Welhan estimated the aquifer's water holding capacity, its transmissivity, and the possibility of interference with other wells. He concluded that pumping from the wells proposed by the applicants would not cause local drawdown interference if the proposed wells are constructed at least 600 feet from other wells. He also concluded that most of the ground water is diverted from storage that recharges annually to an aquifer of limited capacity. He concluded that pumping during the irrigation season decreases the ground water level in the aquifer, but precipitation during the non-irrigation months recharges the aquifer and refills the aquifer to the approximate level of the previous year.

12. Welhan's report speculates that there may be a shallow and a deep aquifer, and that some of the water users presently pumping from the shallow aquifer might be able to pump from the deep aquifer if they deepened their wells. However, Welhan was uncertain about the existence or capacity of the deep aquifer.

13. Welhan stated that during normal and high precipitation years, the precipitation would recharge the storage in the aquifer to satisfy existing uses and the proposed use. He also testified that during low water years, particularly during an extended drought, there may not be sufficient water for the proposed use.

14. Sherl Chapman (Chapman), a geologist representing the applicant, testified that he is familiar with water levels in the area, and that he had also derived some aquifer values

based on tests he had conducted. He concluded that there is sufficient water for ten domestic wells, each with a production rate of between 25 and 35 gallons per minute. He concluded that the aquifer would not produce sufficient water for irrigation of all the lands within the proposed subdivision.

15. Both Chapman and Welhan testified that there would be sufficient water for the proposed use. Testimony of Welhan either conflicted with this conclusion, or was uncertain to support the conclusion. The conclusion of Chapman was not supported by sufficient evidence.

16. Several owners of residential or agricultural properties surrounding the proposed place of use testified regarding declining ground water levels in existing wells. The locations of most of the wells are depicted on Figure 1 of applicant's exhibit no. 4.

17. Richard Hollingsworth testified that water levels in his domestic well have declined 63 feet based on comparing a measurement in July 1978 to a measurement in July 1993. He testified that he cannot irrigate his one-half acre of lawn during the summer. He also testified that sometimes there is insufficient water to flush a toilet during the summer.

18. Everett Diller (Diller) stated that he had lived in the Gibson Jack Creek area since 1978. He testified the water supply was good until a few years ago. He testified he can only irrigate a 7200 square foot front lawn in the summer with his domestic well.

19. Diller stated that he also owns an irrigation well that irrigates approximately four acres. Diller testified that he has not experienced any pumping problems with his irrigation well. The irrigation well is 265 feet deep, approximately 100 feet deeper than the domestic well.

20. Michael Oliver (Oliver) testified that a domestic well was drilled on his property in 1991 to a depth of 180 feet. During 1994, the well was pumping air, and Oliver redrilled his well in December 1994 to a depth of 300 feet. Oliver did not testify that he experienced any water shortages after redrilling his domestic well. Oliver irrigates a 5,000 square foot lawn.

21. Harvey Pickens (Pickens) testified that he owns both a domestic well and an irrigation well located south of the proposed place of use. Both of the wells are approximately 300 feet deep.

22. Pickens testified that his domestic well was drilled in 1969. Pickens purchased the property in 1972. Pickens testified that his domestic well produced sufficient water during the first few years. During the last six to eight years, however, the domestic well has not produced sufficient water for domestic use.

23. Pickens' irrigation well was drilled in 1992. Pickens testified that in the spring of 1996, he could only pump for four hours. In the fall of 1996, he could only pump for 30 minutes.

24. Mary Harling (Harling) owns a well that is 115 feet deep. Harling testified that when her domestic well was drilled in 1978, the water level was within 50 feet of the land surface. Since 1978, Harling has lowered her pump 20 feet, and in 1996, began experiencing problems again. Harling testified that during late 1996, she could not run a clothes washer and a dish washer at the same time because her pump would not produce enough water.

25. Michael Nix testified his well was drilled in 1986 to a depth of 260 feet. Larry Bybee testified he owns a domestic well drilled to a depth of 180 feet. Both testified about declines in ground water levels and difficulty in diverting sufficient water.

26. The testimony of both the experts retained by the applicant and the protestants' witnesses established that there is water available for appropriation during normal-to-high precipitation years, at least during the early part of the summer. Testimony established that during periods of drought, the limited ground water supply in the Gibson Jack drainage may not supply sufficient water for both the proposed use and existing uses. Domestic uses, particularly in-house culinary use, are not amenable to curtailment during periods when the water supply is not adequate.

27. During periods of low precipitation, the domestic uses proposed would remove water from the system that should be delivered to earlier-in-time water right holders.

28. Diversion of water by a new domestic water user for in-house culinary use and water for domestic animals would not significantly reduce water supplies available to holders of earlier-in-time water rights.

29. The protestants stipulated that the applicant has sufficient financial resources to develop the project and that the applications are not proposed for purposes of speculation or delay.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A provides, in pertinent part, as follows:

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 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, where the local public interest is defined as the affairs of the people in the

area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor

2. The applicant bears the burden of proof regarding the criteria set forth in Idaho Code § 42-203A.

3. Domestic water users are intolerant of deficiencies in water supply. Most domestic water users expect to be able to irrigate some landscaping associated with their homes. Domestic water users have an almost absolute expectation that there is sufficient water for in-house culinary use; water to drink, to shower with, to wash clothing, or to flush a toilet.

4. These absolute expectations are held by individuals who may buy lots from the applicant, by the protestants, and by other water users. Present water users are already experiencing in-house culinary water delivery problems and difficulty in irrigating landscaping associated with their homes.

5. Future lot owners should not be mislead into believing that an approval of a water right permit will satisfy their absolute expectation of delivery of domestic water on demand. At times, there will not be sufficient water to satisfy their expectations and the expectations of domestic and irrigation users with earlier uses and earlier priority water rights. Total fulfillment of the expectations of the applicant's successors would injure earlier-in-time water uses.

6. There is sufficient water for strict, limited, in-house culinary use and water for domestic animals associated with future homes that will be built in the proposed development.

7. According to the testimony, there is insufficient water for irrigation of any land in the proposed place of use.

8. The applicant has sufficient financial resources to develop the proposed project.

9. The applicants are not seeking a permit for speculation or delay.

10. The use proposed by the applications is in the public interest, if limited to in-house culinary use and water for domestic animals, and is consistent with principles of conservation of the water of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-8183, and 29-08184 are

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PARTIALLY APPROVED to allow diversion for domestic purposes limited to in-house culinary use and water for domestic animals.

IT IS FURTHER ORDERED that the permits are conditioned as follows:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before January 1, 2003.
2. The approved permits are subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. The permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
5. A well drilled pursuant to this permit must be located at least 600 feet from any existing well. Well spacing closer than 600 feet must be approved by the Department of Water Resources.
6. The subdivision covenants and restrictions must limit water use to in-house culinary use and water for domestic animals only.
7. A homeowners association must be formed by the developer and actively enforce bylaws which set forth the water use restrictions.
8. All outside spigots on homes built in the subdivision must be contained in breakable enclosures and are only to be used in an emergency.
9. All deeds executed by the permit holders to original lot owners must contain a restriction that the water right is limited to in-house use and water for domestic animals.
10. Diversion of water for irrigation or any other purpose outside the authorized culinary use and water for domestic animals is cause for the director of the department to prevent delivery of water from a well until the illegal use is curtailed, civil penalties (if any) are paid, and mitigation (if any) for injury to senior water rights is made as required by the director.

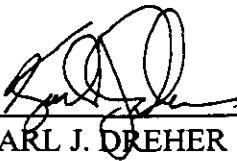
IT IS FURTHER ORDERED that points of diversion and places of use within Wildhorse Ridge Subdivision are further defined as:

1. Well #1 is located between Lots 1 & 2, and serves Lots 1, 2, 19, and 20 under Permit No. 29-08175.
2. Well #2 is located between Lots 3 & 17, and serves Lots 3, 4, 17, and 18 under Permit No. 29-08176.
3. Well #3 is located at the common corner of Lots 5, 6, 13, and 14 , and serves Lots 5, 6, 13, and 14 under Permit No. 29-08177.
4. Well #4 is located within Lot 9, and serves Lots 7, 8, and 9 under Permit No. 29-08178.
5. Well #5 is located between Lots 11 & 12, and serves Lots 10, 11, 12, and 15 under Permit No. 29-08179.
6. Well #6 is located between Lots 16 & 24, and serves Lots 16, 24, and 25 under Permit No. 29-08180.
7. Well #7 is located between Lots 23 & 37 and serves Lots 21, 22, 23, and 37 under Permit No. 29-08181.
8. Well #8 is located between Lots 33 & 34, and serves Lots 33, 34, 35, and 36 under Permit No. 29-08182.
9. Well #9 is located between Lots 30 & 31, and serves Lots 29, 30, 31, and 32 under Permit No. 29-08183.
10. Well #10 is located between Lots 26 & 27, and serves Lots 26, 27, and 28 under Permit No. 29-08184.

IT IS FURTHER ORDERED that the use of water under this permit for purposes other than in-house culinary use and water for domestic animals is hereby DENIED.

IT IS FURTHER ORDERED that if the applicants want to seek water for irrigation or other uses, they may conduct additional studies that demonstrate sufficient water is available and may reapply for appropriation in the future for those purposes.

Dated this 29th day of October, 1997.


KARL J. DREHER

Director

CERTIFICATE OF SERVICE

I do hereby certify that on this 30th day of October, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing AMENDED FINAL ORDER to the following:

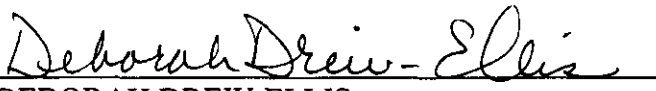
F. Randall Cline
F. Randall Cline, Chartered
P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, ID 83402

Richard Hollingsworth
9502 Gibson Jack
Pocatello, ID 83204

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204

Everett Diller
2917 N. Stephanie Rd.
Pocatello, ID 83204


DEBORAH DREW-ELLIS
Legal Secretary

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

IN THE MATTER OF APPLICATION FOR	)	
PERMIT NOS. 29-08175, 29-08176, 29-08177,	)	
29-08178, 29-08179, 29-08180, 29-08181,	)	ORDER VACATING
29-08182, 29-08183, 29-08184 IN THE	)	CONFERENCE
NAME OF GIBSON JACK JOINT VENTURE,	)	
aka WILDHORSE RIDGE SUBDIVISION.	)	
_____	)	

On August 6, 1997, the Idaho Department of Water Resources (department) issued an Order Denying Petition For Reconsideration and Withdrawing Final Order in this matter. The withdrawn final order, issued July 11, 1997, rejected the applications for permit to appropriate water filed by Gibson Jack Joint Venture (the applicant).

The August 6, 1997 order denied the applicant's petition for reconsideration of the final order, withdrew the final order, and identified two issues to be further considered by the director at a conference with the parties set for August 27, 1997. The issues identified for further consideration included (1) the means available to strictly enforce an in-house only restriction on the use of water under the permits; and 2) whether other sources of water supply, including but not limited to water service from the City of Pocatello, are available to supply the subdivision.

On August 22, 1997, the applicant filed a Request For Consideration of Additional Issues. The additional issues concern (1) the availability of existing ground water supplies, (2) the reasons for varied well performance in the area, and (3) the potential impact of the

proposed wells on existing wells. The applicant also requests that the testimony of its expert witnesses, Dr. Welhan and Sherl Chapman, be reviewed regarding the identified issues and that a transcript of the testimony be made available.

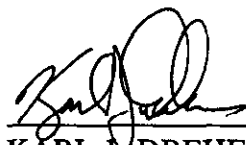
The director, having considered the applicant's request and having determined that it would be helpful to review the hearing testimony prior to further consideration of this matter, issues the following order.

ORDER

IT IS HEREBY ORDERED that the conference before the director set for Wednesday, August 27, 1997, at 1:30 p.m. is vacated, and may be rescheduled at the director's discretion following the director's review of testimony submitted at the hearing before the department in this matter.

IT IS FURTHER ORDERED that all other provisions of the August 6, 1997 order in this matter remain effective.

DATED this 25th day of August, 1997.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 1997, I served a true and correct copy of the foregoing document on the following person(s) by mailing in the U.S. mail, first class, with the correct postage affixed thereto:

F. Randall Kline
F. Randall Kline, Chartered
P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Richard Hollingsworth
9502 Gibson Jack
Pocatello, ID 83204

Everett Diller
2917 N. Stephanie Rd.
Pocatello, ID 83204

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, ID 83402

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204


DEBORAH DREW-ELLIS
Legal Secretary

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

IN THE MATTER OF APPLICATION FOR	)	
PERMIT NOS. 29-08175, 29-08176, 29-08177,	)	
29-08178, 29-08179, 29-08180, 29-08181,	)	ORDER DENYING PETITION
29-08182, 29-08183, 29-08184 IN THE	)	FOR RECONSIDERATION AND
NAME OF GIBSON JACK JOINT VENTURE,	)	WITHDRAWING FINAL ORDER
aka WILDHORSE RIDGE SUBDIVISION.	)	
_____	)	

On July 11, 1997, the Idaho Department of Water Resources (department) issued a Final Order rejecting the applications for permit in this proceeding. Pursuant to I.C. § 67-5246 and IDAPA 37.01.01740 (Rule 740 of the department's Rules of Procedure) a petition for reconsideration is required to be filed with fourteen (14) days of the service of the order. Gibson Jack Joint Venture (the applicant) filed a Petition for Reconsideration with the department on July 28, 1997, more than fourteen days following service of the order. The applicant's petition for reconsideration, therefore, must be denied as untimely.

Unless stayed by a timely petition for reconsideration, a petition for judicial review must be filed with the district court within twenty-eight (28) days of the service of the final order. Because the petition for reconsideration was not timely filed it does not stay the running of the twenty-eight day period to file an appeal with the district court. However, the untimely petition for reconsideration raises matters which should be considered. Therefore, the final order will be withdrawn pursuant to IDWR Rule of Procedure 760 to allow further consideration of specific

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issues. Thereafter, a new final order will be issued and will be subject to further petition for reconsideration and judicial review.

ORDER

IT IS HEREBY ORDERED that applicant's Petition for Reconsideration filed on July 28, 1997, is denied as untimely.

IT IS FURTHER ORDERED that the Final Order issued by the department on July 11, 1997, is withdrawn and shall be replaced by a new final order following further consideration by the director. The specific issues to be further considered are (1) the means available to strictly enforce an in-house only restriction on the use of water under the permits; and (2) whether other sources of water supply, including but not limited to water service from the City of Pocatello, are available to supply the subdivision.

A conference before the director to discuss these issues is set for Wednesday, August 27, 1997, at 1:30 p.m. in Conference Room D, at the department's office at 1301 N. Orchard, Boise, Idaho. A representative of the applicant or applicant's counsel is asked to attend in person. For the convenience of other participants, arrangements may be made to participate in the conference by telephone. Please call the department at (208)327-7920 to give notice of intent to appear by telephone.

DATED this 6th day of August, 1997.



KARL J. DREHER
Director

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of August, 1997, I served a true and correct copy of the foregoing document on the following person(s) by mailing in the U.S. mail, first class, with the correct postage affixed thereto:

F. Randall Kline
F. Randall Kline, Chartered
P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Harold Jones
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Everett Diller
2917 N. Stephanie Rd.
Pocatello, ID 83204


DEBORAH DREW-ELLIS
Legal Secretary

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MAY 07 1998

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 29-08175, 29-08176, 29-08177,)
29-08178, 29-08179, 29-08180, 29-08181,)
29-08182, 29-08183, 29-08184 IN THE)
NAME OF GIBSON JACK JOINT VENTURE,)
aka WILDHORSE RIDGE SUBDIVISION.)
_____)

FINAL ORDER

On July 12, 1996, Gibson Jack Joint Venture (applicant) filed ten applications for permit to appropriate water for domestic purposes with the Department of Water Resources (department). Guy Anderst, Chris Pien and Tom Iverson are partners in Gibson Jack Joint Venture. The applications were protested by Richard Hollingsworth. Everett Diller and Clark Kelly filed untimely protests. The department granted intervenor status to Everett Diller and Clark Kelly. Richard Hollingsworth, Everett Diller, and Clark Kelly will hereafter be referred to as "protestants."

A hearing was conducted on October 22, 1996 in Pocatello, Idaho. The hearing was continued and completed on October 30, 1996 to allow the protestants to present evidence. A recommended order was issued on February 4, 1997. Exceptions were filed by Richard Hollingsworth and Everett Diller.

ANALYSIS OF EXCEPTIONS

Richard Hollingsworth (Hollingsworth) asked for oral argument regarding the exceptions filed. The issues raised by the exceptions do not justify granting oral argument.

Hollingsworth and Everett Diller (Diller) argue three main themes in their exceptions: (1) There is insufficient water to supply domestic use for homes and one-half acre of irrigation as proposed by the applicants; (2) The recommended order conflicts with an earlier denial by the Bannock County Commission of a subdivision proposal that was affirmed by Judge Wallace M. Transtrum on appeal; and (3) If there are water shortages in the future, who will regulate the diversions of water to insure that earlier-in-time-priority water right holders are protected?

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Sufficiency of Water Supply

Finding of fact no. 27 of the recommended order states that "[i]n-house culinary use will not significantly reduce water supplies available to holders of earlier-in-time water rights, because the use is essentially non-consumptive." Conclusion of law nos. 5 and 6 of the recommended order state that total fulfillment of a domestic user's expectation would injure earlier in time water uses, but "[t]here is sufficient water for strict, limited, in-house culinary use and water consumption for stock associated with future homes that will be built" The order portion of the recommended order approved "diversion for domestic purposes for in-house culinary use and direct water consumption by stock associated with a domestic dwelling only." The recommended order denied the request to irrigate any portion of the lots in the subdivision proposed by the applicants.

The provisions of the recommended order are not adequate to prevent injury to prior rights if the waste water from in-house uses is not returned to the aquifer(s) from which the domestic water was pumped. The record does not provide sufficient information to determine whether the septic tanks or other means of disposing of waste water will return the water to the aquifer(s) at a time and location to prevent injury to prior rights.

Administration of Water Rights

The proposed use will only be non-consumptive if the conditions of the recommended order limiting the use to in-house culinary uses are strictly followed. The recommended order did not include, the applicants have not proposed, and on further reflection, the department is not able to suggest a practical plan for administration that will assure that only in-house uses will occur as the subdivision is built and the properties are resold over the coming years.

Regulation of water use by homeowners who may not be apprised of the water use restriction will be difficult. Homeowners expect to be able to irrigate a lawn, a garden, and shrubbery. A water source for a subdivision should be adequate for both the in-house and out-of-house domestic uses. In this case, even if there were sufficient water for the in-house use, the application should be denied.

Conflict with Prior District Court Decision

A subdivision was proposed several years ago at the location described by the pending applications for permit. The Bannock County Commission denied the subdivision proposal, and the denial was appealed to the district court. Judge Wallace Transtrum upheld the Bannock County Commission's decision denying the subdivision proposal. After the decision, the owners of the property submitted another proposal to Bannock County/Pocatello City that was approved. At the time of the hearing, the decision by the local governments was being appealed again, this time by those who were opposed to the subdivision.

The first decision by the district court does not forever prevent the owner of property from proposing another subdivision that is acceptable to the local governments. The prior decision of the district court does not prevent the department from approving a water right after the local governments approved another subdivision plan.

Based on the testimony and evidence presented at the hearing, the director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, and 29-08184 propose diversion of ground water to serve the domestic needs of up to four residential homes per domestic well.

2. The applications propose to cumulatively supply water to a 119 acre, 38 lot subdivision in the Gibson Jack Creek drainage, tributary to the Portneuf River, located southeast of the City of Pocatello. The proposed points of diversion and places of use are all located in Section 19, T7S, R35E, B.M.¹ The exact locations of the proposed points of diversion and places of use within Section 19 are described as follows:

Water Right No.	Point of Diversion	Place of Use
29-08175 ²	NENW	NENW
29-08176	SENW	SENW
29-08177	SWNW	SWNW
29-08178	SWNW	SWNW
29-08179	SWNW	SWNW
29-08180	NENW	NENW
29-08181	NENW	NENW
29-08182	NWNW	NWNW
29-08183	NWNW	NWNW
29-08184	NWNW	NWNW

3. The 119 acre parcel was previously considered for a subdivision in the mid-1980's. The Bannock County Commission rejected the proposal, and the rejection was affirmed by the district court of the State of Idaho.

¹The acronym "B.M." is an abbreviation for "Boise Meridian" and will be eliminated in the remainder of the text.

²The absence of the quadrant identifier implies that the fraction "1/4" should be read into the description.

4. The applicant proposed a new plan for a subdivision to both the City of Pocatello and Bannock County. The proposal was approved by both the city and the county commission. The approvals were being appealed at the time of the hearing.

5. The applicant originally proposed one well and one septic tank for each residence. After initially analyzing the availability of water in the area, the applicant decided that one well for every three or four residences would reduce the chance of local well interference and would also promote better maintenance by the owners. However, whether one well is drilled for each residence, or whether one well is drilled for every three or four residences, has no effect or whether the water supply is sufficient or insufficient for the purpose for which it is sought to be appropriated.

6. The application proposes that each of the residential lots within the subdivision will be two to three acres in size. The application proposes that only one-half acre of each lot be irrigated by the domestic well and that the remainder of each lot will not be irrigated.

7. The protestants are owners of nearby residences and lots of three to sixteen acres in size. The protestants allege that approval of the applications and diversion of water as proposed will result in a reduction in ground water levels and depletion of a limited aquifer to their injury.

8. Because of concerns about water availability, the applicant drilled an eight inch, 300 foot deep test well identified as the Iverson well. The Iverson well is located in the SENW, Section 19, T07S, R35E. The applicants retained John Welhan (Welhan), a professional geologist, to evaluate the effect on other wells of pumping the Iverson well and to generally determine ground water availability in the Gibson Jack Creek drainage.

9. The Iverson well was tested on January 11, 1996. During the test, between 20 and 38 gallons per minute were diverted for 7.3 hours, resulting in a drawdown of 136 feet in the Iverson well.

10. A recording device was placed in a well owned by Chad Nelson, located approximately one-quarter mile away from the Iverson well. The water level in the Nelson well declined 0.02 feet during pumping of the Iverson well.

11. Based on the well test, Welhan estimated the aquifer's water holding capacity, its transmissivity, and the possibility of interference with other wells. He concluded that pumping from the wells proposed by the applications would not cause local drawdown interference if the proposed wells are constructed at least 600 feet from other wells. He also concluded that the ground water is diverted from storage that recharges annually to an aquifer of limited capacity. He concluded that pumping during the irrigation season decreases the

ground water level in the aquifer, but precipitation during the non-irrigation months recharges the aquifer to the approximate level of the previous year.

12. Welhan stated that the storage in the aquifer might not be sufficient to satisfy all the uses if there are extended droughts or if a large number of water users divert additional water from the aquifer. Welhan testified that the local aquifer in the mouth of the Gibson Jack Creek drainage will sustain the withdrawals from existing wells and also the additional ten wells proposed by these applications during normal to high precipitation years. Welhan stated that wells east and north of the proposed subdivision could experience problems during low recharge years.

13. Welhan's report speculates that there may be a shallow and a deep aquifer, and that some of the water users presently pumping from the shallow aquifer might be able to pump from the deep aquifer if they deepened their wells. Welhan was uncertain about the existence or capacity of the deep aquifer, however.

14. Sherl Chapman, a geologist retained by the applicant, testified that he is familiar with water levels in the area. Chapman derived some aquifer values based on tests he had conducted. He concluded that there is sufficient water for ten domestic wells, each with a production rate of between 25 and 35 gallons per minute. He concluded that the aquifer will not produce sufficient water for irrigation of the entire 119 acres within the proposed subdivision.

15. Several owners of residential or agricultural properties surrounding the proposed place of use testified regarding declining ground water levels in existing wells. The location of most of the wells are depicted on Figure 1 of applicant's exhibit no. 4.

16. Richard Hollingsworth testified his domestic well water levels have declined 63 feet from the first measurement in July 1978 to a measurement in July 1993. He testified that he cannot irrigate his one-half acre of lawn during the summer. He also testified that sometimes there is insufficient water to flush a toilet during the summer.

17. Everett Diller (Diller) stated that he has lived in the Gibson Jack Creek area since 1978. He testified the water supply was good until a few years ago. He testified he can only irrigate a 7200 square foot (0.16 acre) front lawn in the summer with his domestic well.

18. Diller also owns an irrigation well that irrigates approximately four acres. Diller hasn't experienced any pumping problems with his irrigation well. The irrigation well is 265 feet deep, approximately 100 feet deeper than the domestic well.

19. Michael Oliver (Oliver) testified that a domestic well was drilled on his property in 1991 to a depth of 180 feet. During 1994, the well was pumping air, and Oliver drilled a

new well in December 1994 to a depth of 300 feet. Oliver did not testify that he experienced any water shortages after drilling a new domestic well. Oliver irrigates a 5,000 square foot (0.11 acre) lawn.

20. Harvey Pickens (Pickens) owns both a domestic well and an irrigation well located south of the proposed place of use. Both of the wells are approximately 300 feet deep.

21. Pickens' domestic well was drilled in 1969. Pickens purchased the property in 1972. During the first few years, Pickens' domestic well produced sufficient water. During the last six to eight years, however, the domestic well has not produced sufficient water for domestic use.

22. Pickens' irrigation well was drilled in 1992. In the spring of 1996, Pickens could only pump for four hours. In the fall of 1996, he could only pump for 30 minutes.

23. Mary Harling (Harling) owns a well that is 115 feet deep. When her domestic well was drilled in 1978, the water level was within 50 feet of the land surface. Since 1978, Harling has lowered her pump 20 feet, and in 1996, began experiencing problems again. During late 1996, Harling could not run a clothes washer and a dish washer simultaneously because her pump would not produce enough water.

24. Michael Nix testified his well was drilled in 1986 to a depth of 260 feet. Larry Bybee testified he owns a domestic well drilled to a depth of 180 feet. Both testified about declines in ground water levels and difficulties in diverting sufficient water.

25. The testimony of the experts retained by the applicant and the testimony of the protestants' witnesses established that there is water available for appropriation during normal-to-high precipitation years, at least during the early part of the summer. Testimony established that during periods of drought or lower than average precipitation, the limited ground water supply in the Gibson Jack drainage will not supply sufficient water for both the proposed use and existing uses. Domestic uses, particularly in-house culinary uses, are not amenable to curtailment during periods when the water supply is not adequate.

26. During periods of low precipitation, the domestic uses proposed will consume ground water that should be delivered to earlier-in-time water right holders.

27. The protestants stipulated that the applicant has sufficient financial resources to develop the project and that the applications are not proposed for purposes of speculation or delay.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A provides, in pertinent part, as follows:

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 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, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor

2. The applicant bears the burden of proof regarding the criteria set forth in Idaho Code § 42-203A.

3. Domestic water users are intolerant of deficiencies in water supply. Most domestic water users expect to be able to irrigate some greenery associated with their homes. Domestic water users have an absolute expectation that there is sufficient water for in-house culinary use; water to drink, to shower with, to wash clothing, or to flush a toilet.

4. These absolute expectations are held by individuals who may buy lots from the applicant, by the protestants, and by other water users. Present water users are already experiencing in-house culinary water delivery problems and difficulty irrigating greenery associated with their homes.

5. Future lot owners should not be misled into believing that an approval of a water right permit will satisfy their absolute expectation of delivery of domestic water on demand. At times, there will not be sufficient water to satisfy their expectations and the expectations of domestic and irrigation users with earlier uses and earlier priority water rights. Total fulfillment of the expectations of the applicant's successors would injure earlier in time water uses.

6. There is insufficient water for the uses proposed by the applications.

7. The applicant has sufficient financial resources to develop the proposed project.

8. The applicant is not seeking a permit for speculation or delay.

9. The use proposed by the applications is not in the public interest because the quantity of water under existing water rights would be reduced, and the water supply is not sufficient for the purpose for which it is sought to be appropriated.

10. The use proposed by the applications is consistent with principles of conservation of the water of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-8183, and 29-08184 are REJECTED and issuance of permits for the applications is REFUSED.

Dated this 11th day of July, 1997.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I do hereby certify that on this 11th day of July, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing FINAL ORDER to the following:

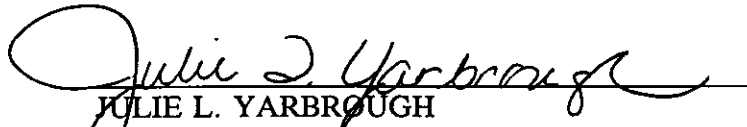
F. Randall Cline
F. Randall Cline, Chartered
P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, ID 83402

Richard Hollingsworth
9502 Gibson Jack
Pocatello, ID 83204

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204

Everett Diller
2917 N. Stephanie Rd.
Pocatello, ID 83204


JULIE L. YARBROUGH
Senior Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
PERMIT NOS. 29-08175, 29-08176,	)	ORDER DENYING PETITIONS
29-08177, 29-08178, 29-08179,	)	FOR RECONSIDERATION
29-08180, 29-08181, 29-08182,	)	
29-08183, 29-08184 IN THE NAME OF	)	
GIBSON JACK JOINT VENTURE, aka	)	
WILDHORSE RIDGE SUBDIVISION.	)	

A recommended order for the above-listed applications for permit was issued on February 4, 1997, and was mailed to the parties on February 5, 1997. On February 24, 1997, the Department of Water Resources (IDWR) received a letter from Everett & Fran Diller, who were protestants in the contested water right matter, objecting to portions of the recommended order. On February 25, 1997, the department received a letter from Richard M. Hollingsworth, another protestant, objecting to the recommended order. The letter from Hollingsworth stated that the letter was a petition for reconsideration. Diller's letter did not state that he was seeking reconsideration.

Rule 720.02.a. of IDWR's Rules of Procedure states that a party may file a petition for reconsideration with the hearing officer within 14 days of the service date of the recommended order. Rule 720.02.a. also states that if the hearing officer does not dispose of a petition for reconsideration within 21 days, it is denied. Rule 720.02.b. states that exceptions to a recommended order may be filed with the director within 21 days after the recommended order is issued, or a petition for reconsideration is denied.

The letters from the protestants were received by IDWR later than 14 days after service of the recommended order. The petitions for reconsideration should be denied.

ORDER

IT IS HEREBY ORDERED that, to the extent the letters from the protestants were intended to be petitions for reconsideration, the petitions are DENIED.

IT IS FURTHER ORDERED that the documents submitted by the protestants will be considered as exceptions filed within 21 days after the issuance of the recommended order.

IT IS FURTHER ORDERED that the parties have 21 days from the date of this order to file further exceptions with the department.

Dated this 20th day of March, 1997.


GARY SPACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I do hereby certify that on this 20th day of March, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing ORDER DENYING PETITIONS FOR RECONSIDERATION to the following:

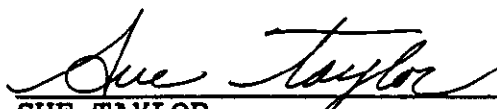
F. Randall Cline
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P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Richard Hollingsworth
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2917 N. Stephanie Rd.
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Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, ID 83402

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204


SUE TAYLOR
Senior Secretary

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 29-08175, 29-08176, 29-08177,)
29-08178, 29-08179, 29-08180, 29-08181,)
29-08182, 29-08183, 29-08184 IN THE)
NAME OF GIBSON JACK JOINT VENTURE,)
aka WILDHORSE RIDGE SUBDIVISION.)
_____)

RECOMMENDED ORDER

On July 12, 1996, Gibson Jack Joint Venture (applicant) filed 10 applications for permit to appropriate water for domestic purposes with the Department of Water Resources (department). Guy Anderst, Chris Pien and Tom Iverson are partners in Gibson Jack Joint Venture. The applications were protested by Richard Hollingsworth. Everett Diller and Clark Kelly also filed untimely protests. The department granted intervenor status to Everett Diller and Clark Kelly. Richard Hollingsworth, Everett Diller and Clark Kelly will hereafter be referred to as "protestants."

A hearing was conducted on October 22, 1996 in Pocatello, Idaho. The hearing was continued and completed on October 30, 1996.

Based on the testimony and evidence presented at the hearing, the hearing officer recommends the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, and 29-08184 propose diversion of ground water to serve the domestic needs of up to four residential homes per domestic well.

2. The applications propose to cumulatively supply water to a 119 acre 38 lot subdivision in the Gibson Jack Creek drainage, tributary to the Portneuf River, located southeast of the City of Pocatello. The proposed points of diversion and places of use are all located in Section 19, T7S, R35E, B.M. The exact location of the proposed points of diversion and places of use within Section 19 are described as follows:

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Water Right No.	Point of Diversion	Place of Use
29-08175	NENW	NENW
29-08176	SEnw	SEnw
29-08177	SWNW	SWNW
29-08178	SWNW	SWNW
29-08179	SWNW	SWNW
29-08180	NENW	NENW
29-08181	NENW	NENW
29-08182	NWNW	NWNW
29-08183	NWNW	NWNW
29-08184	NWNW	NWNW

3. The 119 acre parcel was previously considered for a subdivision in the mid-1980's. The Bannock County Commission rejected the proposal, and the rejection was confirmed by the district court of the State of Idaho.

4. The applicant proposed a new subdivision to both the City of Pocatello and Bannock County. The proposal was approved by both the city and the county commission. The approvals are currently being appealed.

5. The applicant originally proposed one well and one septic tank for each residence. After initially analyzing the availability of water in the area, however, the applicant decided that one well for every three or four residences would reduce the chance of local well interference and would also force better maintenance by the owners.

6. Each of the residential lots within the subdivision will be two to three acres in size. The applications propose one-half acre of irrigation per residential lot. The remainder of each lot will remain in natural vegetation.

7. The protestants are owners of nearby residences and lots from three to sixteen acres in size. The protestants allege that approval of the applications and diversion of water as proposed will result in a reduction in ground water levels and depletion of a limited aquifer to their injury.

8. Because of concerns of water availability, the applicant drilled a test well referred to as the Iverson well. The Iverson well is located in the SENW, Section 19, T07S, R35E. The applicants hired John Welhan (Welhan), a professional geologist, to evaluate the effect pumping from the well would have on other wells and to generally determine ground water availability in the Gibson Jack Creek drainage.

9. The Iverson well was tested on January 11, 1996. It pumped between 20 and 38 gallons per minute. A recording device was placed in a well owned by Chad Nelson. The Nelson well is located approximately one-quarter mile away from the Iverson well.

10. Based on the well test, Welhan estimated the aquifer's water holding capacity, its transmissivity, and the possibility of interference with other wells. He concluded that there would be very little local interference caused by the proposed wells. He also concluded that most of the ground water is diverted from storage that recharges annually to an aquifer of limited capacity. He concluded that pumping during the irrigation season decreases the ground water level in the aquifer, but precipitation during the non-irrigation months recharges the aquifer and refills the aquifer to the approximate level of the previous year.

11. Welhan stated that the storage in the aquifer might not be sufficient to satisfy all the uses if there are extended droughts or if a large number of water users divert additional water from the aquifer. Welhan testified that the local aquifer in the mouth of the Gibson Jack Creek drainage will sustain the withdrawals from existing wells and also the additional ten wells proposed by these applications during normal to high precipitation years. Welhan stated that wells east and north of the proposed subdivision could experience problems during low recharge years.

12. Welhan's report speculates that there may be a shallow and a deep aquifer, and that some of the water users presently pumping from the shallow aquifer might be able to pump from the deeper aquifer if they deepened their wells. Welhan was uncertain about the existence or capacity of the deeper aquifer, however.

13. Sherl Chapman, a geologist representing the applicant, testified that he is familiar with water levels in the area, and that he had also derived some aquifer values based on tests he had conducted. He concluded that there was sufficient water for domestic wells with a production rate of between 25 and 35 gallons per minute. He concluded that the aquifer would not produce sufficient water for irrigation of all the lands within the proposed subdivision.

14. Several owners of residential or agricultural properties surrounding the proposed place of use testified regarding declining ground water levels in existing wells. The location of most of the wells are depicted on Figure 1 of applicant's exhibit no. 4.

15. Richard Hollingsworth testified his domestic well water levels have declined 63 feet from the first measurement in July 1978 to a measurement in July 1993. He testified that he cannot irrigate his one-half acre of lawn during the summer. He also testified that sometimes there is insufficient water to flush a toilet during the summer.

16. Everett Diller (Diller) stated that he had lived in the Gibson Jack Creek area since 1978. He testified the water supply was good until a few years ago. He testified he can only irrigate a 7200 square feet front lawn in the summer with his domestic well.

17. Diller also owns an irrigation well that irrigates approximately four acres. Diller hasn't experienced any pumping problems with his irrigation well. The irrigation well is 265 feet deep, approximately 100 feet deeper than the domestic well.

18. Michael Oliver (Oliver) testified that a domestic well was drilled on his property in 1991 to a depth of 180 feet. During 1994, the well was pumping air, and Oliver redrilled his well in December 1994 to a depth of 300 feet. Oliver did not testify that he experienced any water shortages after redrilling his domestic well. Oliver irrigates a 5,000 square foot lawn.

19. Harvey Pickens (Pickens) owns both a domestic well and an irrigation well located south of the proposed place of use. Both the wells are approximately 300 feet deep.

20. Pickens' domestic well was drilled in 1969. Pickens purchased the property in 1972. During the first few years, Pickens' domestic well produced sufficient water. During the last six to eight years, however, the domestic well has not produced sufficient water for domestic use.

21. Pickens' irrigation well was drilled in 1992. In the spring of 1996, Pickens could only pump for four hours. In the fall of 1996, he could only pump for 30 minutes.

22. Mary Harling (Harling) owns a well that is 115 feet deep. When her domestic well was drilled in 1978, the water level was within 50 feet of the land surface. Since 1978, Harling has lowered her pump 20 feet, and in 1996, began experiencing problems again. During late 1996, Harling could not run a clothes washer and a dish washer at the same time because her pump would not produce enough water.

23. Michael Nix testified his well was drilled in 1986 to a depth of 260 feet. Larry Bybee testified he owns a domestic well drilled to a depth of 180 feet. Both testified about declines in ground water levels and difficulty in diverting sufficient water.

24. The testimony of both the experts retained by the applicant and the protestants' witnesses established that there is water available for appropriation during normal-to-high precipitation years, at least during the early part of the summer. Testimony established that during periods of drought or lower than average precipitation, the limited ground water supply in the Gibson Jack drainage may not supply sufficient water for both the proposed use and existing uses.

25. During periods of low precipitation, the domestic uses proposed will remove water from the system that should be delivered to earlier-in-time water right holders.

26. Diversion of water by a new domestic water user for in-house culinary use will not significantly reduce water supplies available to holders of earlier in time water rights, because the use is essentially non-consumptive.

27. The protestants stipulated that the applicant has sufficient financial resources to develop the project and that the applications are not proposed for purposes of speculation or delay.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A provides, in pertinent part, as follows:

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 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, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor

2. The applicant bears the burden of proof regarding the criteria set forth in Idaho Code § 42-203A.

3. Domestic water users are intolerant of deficiencies in water supply. Most domestic water users expect to be able to irrigate some greenery associated with their homes. Domestic water users have an almost absolute expectation that there is sufficient water for in-house culinary use; water to drink, to shower with, to wash clothing, or to flush a toilet.

4. These absolute expectations are held by individuals who may buy lots from the applicant, by the protestants, and by other water users. Present water users are already experiencing in-house culinary water delivery problems and difficulty in irrigating greenery associated with their homes.

5. Future lot owners should not be misled into believing that an approval of a water right permit will satisfy their absolute expectation of delivery of domestic water on demand. At times, there will not be sufficient water to satisfy their expectations and the expectations of domestic and irrigation users with earlier uses and earlier priority water rights. Total fulfillment of the expectations of the applicant's successors would injure earlier in time water uses.

6. There is sufficient water for strict, limited, in-house culinary use and water consumption for stock associated with future homes that will be built in the proposed development.

7. According to the testimony, there is insufficient water for irrigation of any land in the proposed place of use.

8. The applicant has sufficient financial resources to develop the proposed project.

9. The applicants are not seeking a permit for speculation or delay.

10. The use proposed by the applications is in the public interest, except where injury or insufficiency of the water supply relates to the public interest.

11. The use proposed by the applications is consistent with principles of conservation of the water of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-8183, and 29-08184 are **PARTIALLY APPROVED** to allow diversion for domestic purposes for in-house culinary use and direct water consumption by stock associated with a domestic dwelling only.

IT IS FURTHER ORDERED that the permits are conditioned as follows:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before the date in the Final Order.

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.

RECOMMENDED ORDER, Page 6

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4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

5. A well drilled pursuant to this permit must be located at least 500 feet from any existing well. Well spacing closer than 500 feet must be approved by the Department of Water Resources.

IT IS FURTHER ORDERED that points of diversion and places of use within Wildhorse Ridge Subdivision are further defined as:

1. Well #1 is located between Lots 1 & 2, and serves Lots 1, 2, 19, and 20 under Permit No. 29-08175.

2. Well #2 is located between Lots 3 & 17, and serves Lots 3, 4, 17, and 18 under Permit No. 29-08176.

3. Well #3 is located at the common corner of Lots 5, 6, 13, and 14, and serves Lots 5, 6, 13, and 14 under Permit No. 29-08177.

4. Well #4 is located within Lot 9, and serves Lots 7, 8, and 9 under Permit No. 29-08178.

5. Well #5 is located between Lots 11 & 12, and serves Lots 10, 11, 12, and 15 under Permit No. 29-08179.

6. Well #6 is located between Lots 16 & 24, and serves Lots 16, 24, and 25 under Permit No. 29-08180.

7. Well #7 is located between Lots 23 & 37 and serves Lots 21, 22, 23, and 37 under Permit No. 29-08181.

8. Well #8 is located between Lots 33 & 34, and serves Lots 33, 34, 35, and 36 under Permit No. 29-08182.

9. Well #9 is located between Lots 30 & 31, and serves Lots 29, 30, 31, and 32 under Permit No. 29-08183.

10. Well #10 is located between Lots 26 & 27, and serves Lots 26, 27, and 28 under Permit No. 29-08184.

Dated this 4th day of February, 1997.



GARY SPACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I do hereby certify that on this 5th day of February, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing RECOMMENDED ORDER to the following:

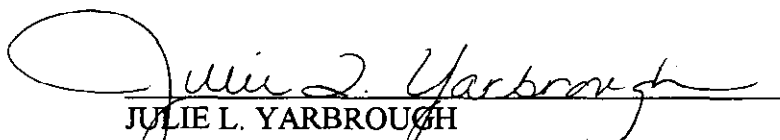
F. Randall Cline
F. Randall Cline, Chartered
P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, ID 83402

Richard Hollingsworth
9502 Gibson Jack
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Pocatello, ID 83204

Everett Diller
2917 N. Stephanie Rd.
Pocatello, ID 83204



JULIE L. YARBROUGH
Senior Secretary

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

IN THE MATTER OF PETITION TO INTERVENE)
IN PROTESTED APPLICATIONS FOR PERMIT NOS.)
29-08175, 29-08176, 29-08177, 29-08178)
29-08179, 29-08180 29-08181, 29-08182,)
29-08183 & 29-08184 IN THE NAMES OF BOB)
TRIPP & ROBERT THOMPSON DBA GIBSON JACK)

**ORDER GRANTING
PETITION
TO INTERVENE**

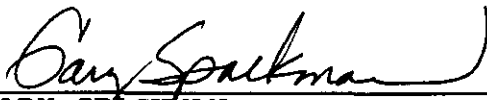
On August 17, 1996, Clark Kelly (petitioner) submitted to the Department of Water Resources (department) a petition for an order to intervene in the Matter of Applications for Permit Authorized in Rule of Procedure IDAPA 37.01.01350 (Rule 350).

Petitioner has shown sufficient direct and substantial interest in the above captioned matter without unduly broadening the issues for the department to grant the petitioner intervention into the matter.

ORDER

IT IS THEREFORE HEREBY ORDERED that the petition of Clark Kelly requesting intervention in any conference and/or hearing scheduled by the department in connection with the above captioned matter is **GRANTED**.

Dated this 17th day of October, 1996.



GARY SPACKMAN
HEARING OFFICER

MICROFILMED

MAY 07 1998

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

IN THE MATTER OF PETITION TO INTERVENE)	
IN PROTESTED APPLICATIONS FOR PERMIT NOS.)	
29-08175, 29-08176, 29-08177, 29-08178)	ORDER GRANTING
29-08179, 29-08180 29-08181, 29-08182,)	PETITION
29-08183 & 29-08184 IN THE NAMES OF BOB)	TO INTERVENE
TRIPP & ROBERT THOMPSON DBA GIBSON JACK)	
_____)	

On August 12, 1996, Everett D Diller (petitioner) submitted to the Department of Water Resources (department) a petition for an order to intervene in the Matter of Applications for Permit Authorized in Rule of Procedure IDAPA 37.01.01350 (Rule 350).

Petitioner has shown sufficient direct and substantial interest in the above captioned matter without unduly broadening the issues for the department to grant the petitioner intervention into the matter.

ORDER

IT IS THEREFORE HEREBY ORDERED that the petition of Everett D Diller requesting intervention in any conference and/or hearing scheduled by the department in connection with the above captioned matter is **GRANTED**.

Dated this 17th day of October, 1996.



GARY SPACKMAN
HEARING OFFICER

MICROFILMED
MAY 07 1998

Certificate of Mailing

I hereby certify that I mailed a true and correct copy, postage prepaid, of Order Granting Petition to Intervene to the following Person(s):

Everett D. Diller
2917 N. Stephanie
Pocatello, ID 83204

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204

Richard M. Hollingsworth
PO Box 4
9502 Gibson Jack
Pocatello, ID 83204-0004

F. Randall Kline, Chartered
PO Box 397
427 N. Main Suite L
Pocatello, ID 83204

Chris Pine
PO Box R
Pocatello, ID 83206

IDWR - Eastern Region
H. W. Jones

Dated this 18th day of October, 1996.



Roberta Loveall
Water Distribution Section

MICROFILMED
MAY 07 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT)	
NOS. 29-08175, 29-08176, 29-08177,)	NOTICE OF
29-08178, 29-08179, 29-08180, 29-08181,)	
29-08182, 29-08183, 29-08184 IN THE)	HEARING
NAME OF GIBSON JACK JOINT VENTURE aka)	
WILD HORSE RIDGE SUBDIVISION)	

On July 12, 1996, Gibson Jack Joint Venture filed with the Department of Water Resources applications for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183 and 29-08184. On August 14, 1996, Richard M. Hollingsworth protested the applications. On August 29, 1996, Clark Kelly filed a petition to intervene. On September 12, 1996, Everett D. Diller also filed a petition to intervene. The Department will rule on the petition to intervene by separate order.

THE DEPARTMENT HAS SCHEDULED THE MATTER FOR HEARING ON OCTOBER 22, 1996, AT 9:30 A.M. TO 5:00 P.M. IN THE UPPER CONFERENCE ROOM AT THE POCATELLO AIRPORT, POCATELLO, IDAHO. The hearing will be held in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources.

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 the exhibits to each party and to the presiding officer. The hearing officer will be Gary Spackman.

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 3rd day of October, 1996.



Gary Spackman
Hearing Officer

MICROFILMED
MAY 07 1998

Certificate of Mailing

I hereby certify that I mailed a true and correct copy,
postage prepaid, of Notice of Hearing to the following person(s):

Everett D. Diller
2917 N. Stephanie
Pocatello, ID 83204

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204

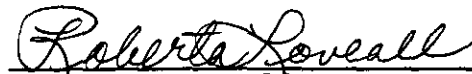
Richard M. Hollingsworth
PO Box 4
9502 Gibson Jack
Pocatello, ID 83204-0004

F. Randall Kline, Chartered
PO Box 397
427 N. Main Suite L
Pocatello, ID 83204

Chris Pine
PO Box R
Pocatello, ID 83206

IDWR - Eastern Region
H. W. Jones

Dated this 3rd day of October, 1996.



Roberta Loveall
Water Distribution Section

MICROFILMED
MAY 07 1998

Well #10

FORM 202

2/96

Ident. No. 29-8184

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

RECEIVED

JUL 12 1996

To appropriate the public waters of the State of Idaho

Department of Water Resources
Eastern Region

1. Name of Applicant Gibson Jack Joint Venture Phone 208-237-8180
Mailing address P.O.Box R Pocatello Idaho 83206
2. Source of water supply groundwater which is a tributary of n/a
3. Location of point of diversion is Township 7S Range 35E Sec. 19 in the NW 1/4,
NW 1/4, Govt. Lot , B.M., Bannock County;
additional points of diversion if any:
4. Water will be used for the following purposes:
Amount 0.05 domestic purposes from 8-1 to 12-31 (both dates inclusive)
(cfs or acre-feet per annum) culinary
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)
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 to be appropriated is (a) 0.05 0.02 cfs and/or (b)
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Describe type and size of devices used to divert water from the source each domestic well to serve up to
4 households. 3 horsepower pump with water storage, and booster pump to serve each household.
b. Height of storage dam feet; active reservoir capacity acre-feet; total
reservoir capacity acre-feet
c. Proposed well diameter is eight inches; proposed depth of well is 300 feet
d. Is ground water with a temperature of greater than 85°F being sought? no
e. If well is already drilled, when? ; Drilling firm ;
Well was drilled for (well owner) ; Drilling Permit No.
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. 4 household per well. Irrigation will be limited to 1/2 acre
per home
e. Other; describe fully. Restrictive Covenant will limit each home to 1/2 acre of irrigation
per home, and each home will have water meter.

MICROFILMED

MAY 07 1998

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	RGE	SEC	N E				N W				S W				S E				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7S	35E	19						ID											ID

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. _____

11. a. Who owns the property at the point of diversion? Gibson Jack Joint Venture

b. Who owns the land to be irrigated or place of use? Gibson Jack Joint Venture

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

12. Remarks: _____

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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.


Signature of Applicant (and title, if applicable)

Received by HLJ Date 7-12-96 Time _____ Preliminary check by _____
Fee \$ 50.00 Received by HLJ # E022381 Date 7-12-96
Publication prepared by RB Date 8-1-8-96 Published in Idaho State Journal
Publication approved _____ Date _____ MICROFILMED

MAY 07 1998

PRELIMINARY WILD HORSE RIDGE

NW 1/4 SEC
T. 7 S., R. 3
BANNOCK COUNTY

7.0 DAVIES JR. & CHRISTINE DAVIES JOHNSON
DIST. 311575

LITTLE RED ROCK INC.
DIST. 479413

GIBSON JACK ACRES
ACCORDING DIST. 553001

ROAD TO EXTEND NORTH
BEYOND CULDESAC IN
FUTURE DEVELOPMENT

EXISTING WATER LINE

LOT 8

LOT 7

ALLOT 2

LOT 6

LOT 5

LOT 4

RUNOFF CONTROL
FACILITIES

VE TABLE

CR	L	FT
140.12	L1	75.18 FT
115.53	L2	105.12 FT
50.73	L3	26.61 FT
121.82	L4	132.05 FT
117.08	L5	82.82 FT
312.79	L6	108.80 FT
207.12	L9	124.38 FT
26.77	L10	124.08 FT
38.37	L11	7.27 FT
78.83	L12	161.95 FT
82.36	L13	115.69 FT
68.57	L14	17.45 FT
194.14	L15	94.86 FT
306.79	L16	117.60 FT
100.40	L17	108.80 FT
181.98	L18	140.45 FT
169.12	L19	105.12 FT
449.14	L20	26.61 FT
323.06	L21	9.67 FT
289.01		
282.88		
44.01		
26.01		
73.60		
92.78		
101.78		
26.01		
44.01		
41.34		
262.72		
127.08		
127.74		
599.12		
269.43		
173.70		
198.53		
31.59		
110.79		
42.77		
30.58		
137.73		
157.36		
93.45		
42.77		
200.90		
110.64		
98.38		
47.02		
128.23		
8.31		
118.56		

LINE TABLE

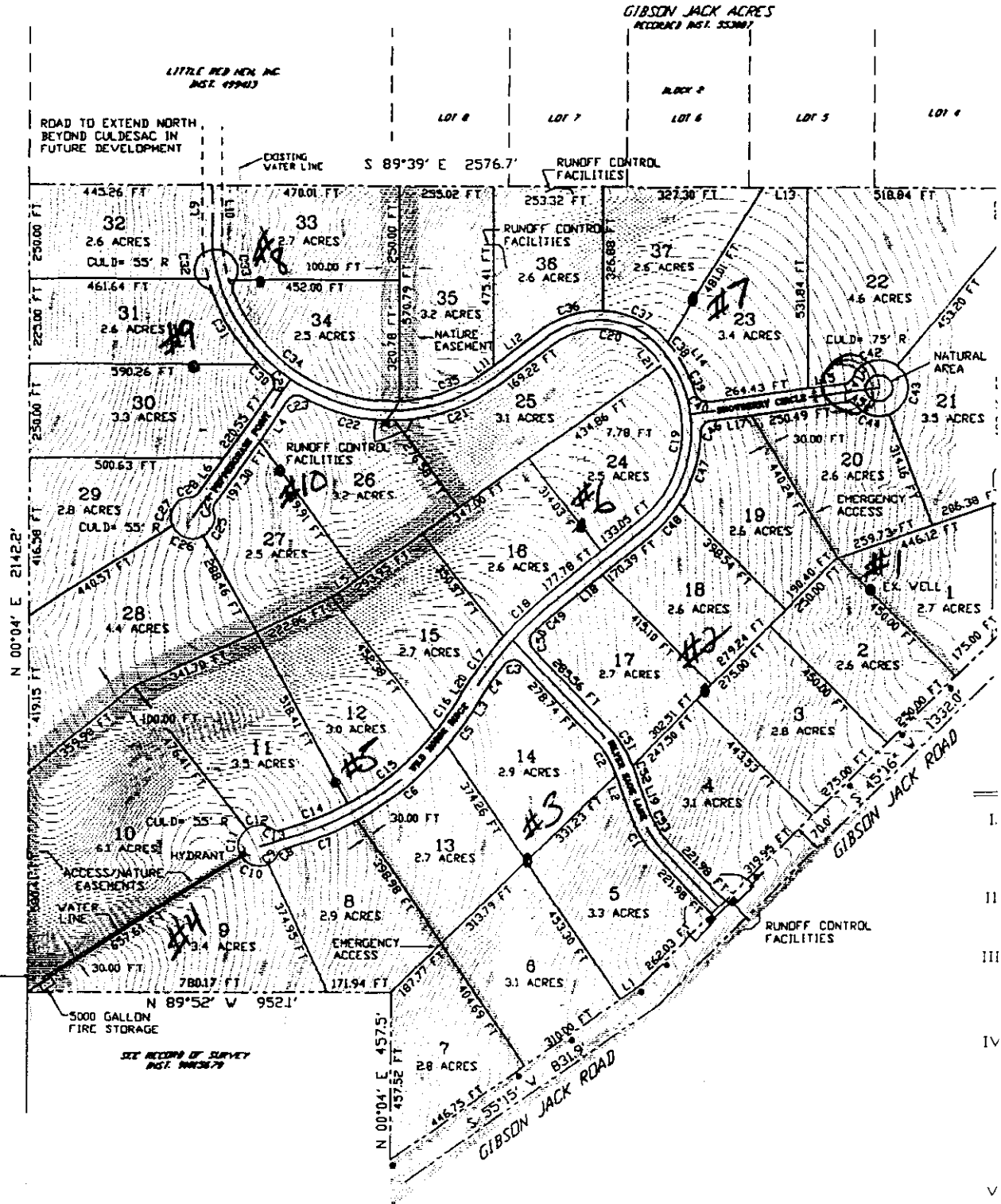
NUMBER	DISTANCE
L1	75.18 FT
L2	105.12 FT
L3	26.61 FT
L4	132.05 FT
L5	82.82 FT
L6	108.80 FT
L9	124.38 FT
L10	124.08 FT
L11	7.27 FT
L12	161.95 FT
L13	115.69 FT
L14	17.45 FT
L15	94.86 FT
L16	117.60 FT
L17	108.80 FT
L18	140.45 FT
L19	105.12 FT
L20	26.61 FT
L21	9.67 FT

OPINION INVESTMENT CO.
DIST. 389441

100'X100'
FIRE SUPPRESSION
STORAGE AREA

5000 GALLON
FIRE STORAGE

SEE RECORD OF SURVEY
DIST. 408379



SHEPHERD ENGINEERING INC.
203 S GARFIELD AVE.
POCATELLO, ID. 83204
PHONE (208) 233-9793

MICROFILMED
MAY 07 1998

GIBSON JACK JOINT VENTURE

GUY ANDERST
TOM IVERSON
CHRIS PEIN

P.O. BOX "R"
POCATELLO IDAHO 83206
(208) 237-8180

Everett D. & Fran Diller
2917 North Stephanie Road
Pocatello, Idaho 83204

RECEIVED
MAR 12 1998
Department of Water Resources

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 29-08175, 29-08176, 29-08177,)
29-08178, 29-08179, 29-08180, 29-08181,)
29-08182, 29-08183, 29-08184 IN THE NAME)
OF GIBSON JACK JOINT VENTURE a/k/a)
WILDHORSE RIDGE SUBDIVISION)

Case No.
CVOC 97-02001

CHRIS PEIN d/b/a GIBSON JACK JOINT)
VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION)

NOTICE OF
APPEARANCE AND
REQUEST FOR NOTICE

Applicant-Appellant,)

vs.)

IDAHO DEPARTMENT OF WATER RESOURCES,)

Respondent.)

Comes now Everett D. & Fran Diller appears in the above
entitled matter. Everett D. & Fran Diller further requests to
receive notice of all filings in this matter pursuant to Idaho
Code and I. R. C. P..

DATED this 10 day of MARCH, 1998.


Everett D. Diller


Frances J. Diller
MICROFILMED

MAY 07 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10 day of March, 1998, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Document Served: NOTICE OF APPEARANCE AND REQUEST FOR NOTICE
Case No. 97-02001

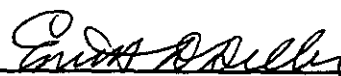
Harold Jones
Department of Water Resources
Eastern Region
900 North Skyline
Idaho Falls, Idaho 83402

Karl J. Dreher, Director
Department of Water Resources
Post Office Box 83720
Boise, Idaho 83720-0098

By U.S. Mail

Phillip J. Rassier
Deputy Attorney General
Idaho Dept. of Water Resources
Post Office Box 83720
Boise, Idaho 83720-0098

F. Randall Kline
Post Office Box 397
Pocatello, Idaho 83204



Everett Diller

MICROFILMED

MAY 07 1998

RECEIVED

MAR 12 1998

Richard M. Hollingsworth
Post Office Box #4
9502 Gibson Jack
Pocatello, Idaho 83204-0004

Department of Water Resources

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 29-08175, 29-08176, 29-08177,)
29-08178, 29-08179, 29-08180, 29-08181,)
29-08182, 29-08183, 29-08184 IN THE NAME)
OF GIBSON JACK JOINT VENTURE a/k/a)
WILDHORSE RIDGE SUBDIVISION)

Case No.
CVOC 97-02001

CHRIS PEIN d/b/a GIBSON JACK JOINT)
VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION)

NOTICE OF
APPEARANCE AND
REQUEST FOR NOTICE

Applicant-Appellant,)

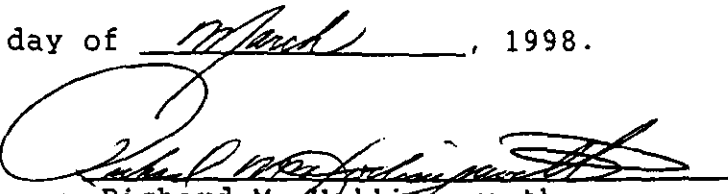
vs.)

IDAHO DEPARTMENT OF WATER RESOURCES,)

Respondent.)

Comes now Richard M. Hollingsworth appears in the above
entitled matter. Richard M. Hollingsworth further requests to
receive notice of all filings in this matter pursuant to Idaho
Code and I. R. C. P..

DATED this 10 day of March, 1998.


Richard M. Hollingsworth

MICROFILMED

MAY 07 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10 day of March, 1998, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

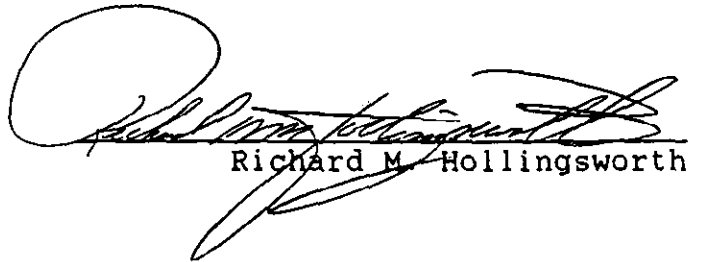
Document Served: NOTICE OF APPEARANCE AND REQUEST FOR NOTICE
Case No. 97-02001

Harold Jones
Department of Water Resources
Eastern Region
900 North Skyline
Idaho Falls, Idaho 83402

Karl J. Dreher, Director
Department of Water Resources
Post Office Box 83720
Boise, Idaho 83720-0098

Phillip J. Rassier
Deputy Attorney General
Idaho Dept. of Water Resources
Post Office Box 83720
Boise, Idaho 83720-0098

F. Randall Kline
Post Office Box 397
Pocatello, Idaho 83204



Richard M. Hollingsworth

MICROFILMED

MAY 07 1998

The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

COPY

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

January 8, 1998

RECEIVED

JAN 12 1998

Department of Water Resources

Clerk of the Court
BANNOCK COUNTY COURTHOUSE
P. O. Box 4847
Pocatello, Idaho 83205

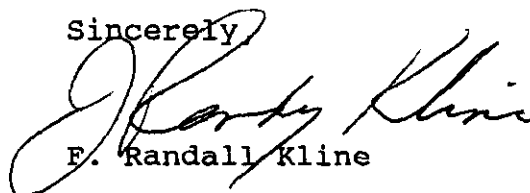
Re: *Chris Pein d/b/a Gibson Jack Joint Venture v. Idaho*
Department of Water Resources; Case No. CVOC-97-02001

Dear Clerk:

Enclosed for filing please find the Statement of Issues on Appeal regarding the above-referenced matter.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,


F. Randall Kline

FRK:ljw

Encl

c: Chris Pein
Harold Jones
Richard Hollingsworth
Clark Kelly
Everett Diller
Karl J. Dreher, Director

MICROFILMED
MAY 07 1998

F. Randall Kline, Esquire
F. RANDALL KLINE, CHARTERED
427 N. Main St., Suite L
P.O. Box 397
Pocatello, Idaho 83204-0397
Telephone: (208) 232-9007

COPY
RECEIVED

JAN 12 1998

Department of Water Resources

Attorney for Petitioner

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHRIS PEIN d/b/a GIBSON JACK)
JOINT VENTURE a/k/a WILDHORSE)
RIDGE SUBDIVISION,)

Plaintiff,)

vs.)

IDAHO DEPARTMENT OF WATER)
RESOURCES,)

Defendants.)

Case No. CVOC-97-02001

Judge: Smith

STATEMENT OF ISSUES ON APPEAL

Rule IRCP 84(f)(5)

COMES NOW Chris Pein d/b/a Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision, by and through his attorney of record, F. Randall Kline, and submits the Statement of Issues on Appeal pursuant to statute.

1. The Order Denying the Petition for Reconsider was done arbitrarily, capriciously, and with an abuse of discretion. It is requested that additional information be allowed to be presented. The hearing officer has apparently misconstrued the clarification of issues. It is, therefore, submitted that the Order Denying the Petition for Reconsideration dated November 25, 1997 violated the applicant's rights.

2. There is no justifiable or legitimate basis for the conclusion that there is insufficient water to permit up to 1/2 acre of yard watering.

3. In the Amended Final Order dated October 29, 1997, finding of fact #13 is not supported in the record, but is an arbitrary and capricious assumption made by the director.

4. Finding #15 is not supported by the evidence, is arbitrary and capricious, and made upon unlawful procedure.

5. Although several land owners testified that they had problems with the wells, none of them provided any objective information with regard to problems with the wells, why they were having difficulties with their wells, or why their wells had drawn down. The director acted arbitrary and capriciously in not requiring objective evidence to be submitted, demonstrating why and how, and showing some degree of measurement of decrease of other land owner's wells. Several land owners and even some of the protestants testified that their wells were working fine. There should have been a requirement of the protestants, to some degree of objective measurement, to determine why some of their wells were not currently functioning, whether they be silted in, problems with hard water, or obtaining objective measurements as to well draw downs and well pumping rates of the alleged problem wells.

6. It is submitted that the only objective statements made as to availability of water indicated that there would be sufficient water to comply with the applicant's request which is in-house use, plus up to 1/2 acre per lot.

7. It is further submitted that the review was made upon unlawful procedure based upon information and belief, and representations made by one of the protestants that were inappropriate ex parte communications with the Department, which may have had an impact on the conclusion reached by the director.

8. At finding #27 and #28, it indicates a:

"diversion of water by new domestic water user for in-house culinary use and water for domestic animals would not significantly reduce water supplies available to holders of earlier-in-time water rights".

With that statement, the applicants agree. However, there have been no objective showing how water or lawn irrigating of up to 1/2 acre would interfere with earlier-in-time water rights, or the degree or volume of water would impact degree of removal, or the volume of water removed from the aquifer would cause any impact on earlier-in-time users.

9. Conclusion #5 states that:

"at times, there will not be sufficient water to satisfy their expectations and the expectations of domestic and irrigation users with earlier uses and earlier priority water rights".

Nothing in the record indicates that the wells proposed by the applicant would have an adverse affect on other users. Nothing in the record indicates that there will be insufficient water for the proposed use of in-house and up to 1/2 acre. As such, the conclusion reached is arbitrary, capricious, and an abuse of discretion as it is based upon pure speculation and conjecture and not upon any objective facts set forth in the record.

10. Conclusion #7 which states that there is insufficient water for irrigation of any land in the proposed place of use, is not supported by the record, is based upon speculation, is arbitrary, capricious, and an abuse of discretion.

11. The approval with the condition that the subdivision's covenants and restrictions limit water use to in-house culinary use and water for domestic animals only, that all outside spigots on the homes on the subdivision be contained with breakable enclosures

and are only to be used in emergency, and that the deeds require a restriction that the water is to be used only for in-house and domestic water animal purposes and the restriction for any outside watering be cause for the director of the department to prevent delivery of water from the well until the illegal use is curtailed and the civil penalties are paid, and those conclusions and the order is a violation of the constitutional and statutory provisions, is in excess of the statutory authority of the agency, is made upon unlawful procedure, and/or is arbitrary, capricious, and abuse of discretion.

12. The speculation that there may possibly be an adverse impact on established users (1) is not supported by the record, (2) is based upon speculation, and (3) contrary to the testimony provided by the only experts that testified in this matter.

13. Apparently, someone in the Department of Water Resources and/or the director utilized information which was not part of the record, therefore, the decision is in violation of constitutional statutory provisions, is in excess of the statutory authority of the agency, and made upon unlawful procedure and/or arbitrary, capricious and abuse of discretion.

14. It is further submitted that the finding that there is insufficient water to meet the applicants proposed use is not supported by substantial evidence in the record as a whole.

15. It is submitted that the findings by the Department will render the development unmarketable and as such the agency's determination has substantially prejudiced the rights of the applicant.

16. The agency has failed, refused and neglected to consider other options, including allowing the applicant to immediately establish up to six wells and engage in "staged" or phased development to determine if in fact there is an injury or damage to others. The agency's refusal for additional hearings or considering other options is arbitrary, capricious, and an abuse of discretion.

DATED this 7 day of January, 1998.


F. Randall Kline
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8 day of January, 1998, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, Idaho 83402

 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax

Richard Hollingsworth
9502 Gibson Jack
Pocatello, Idaho 83204

 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax

Clark Kelly
9685 Heather Rd.
Pocatello, Idaho 83204

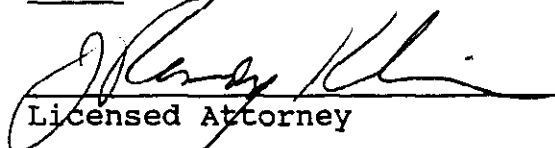
 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax

Everett Diller
2917 N. Stephanie Rd.
Pocatello, Idaho 83204

 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax

Karl J. Dreher, Director
Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax


Licensed Attorney

RECEIVED

DEC 24 1997

Department of Water Resources

HEPWORTH, LEZAMIZ & HOHNHORST.
CHARTERED
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389
Telephone: (208)734-7510
Attorneys for Cross-Petitioners
(PDB\51125CP.D22)\lm

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

JEFF SESSIONS, d/b/a MOUNTAIN
ROUND RANCH,

Petitioner.

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 43-07321
AND APPLICATION FOR TRANSFER
NO. 4640 IN THE NAME OF ROUND
MOUNTAIN RANCH.

HAROLD JONES and RAY JONES,

Cross-Petitioners.

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 43-07321
AND APPLICATION FOR TRANSFER
NO. 4640 IN THE NAME OF ROUND
MOUNTAIN RANCH.

CASE NO. CV-97-1044D

CROSS-PETITION FOR
JUDICIAL REVIEW

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COME NOW Harold Jones and Ray Jones and respectfully cross-petition the
court to review the Final Order of the Director of the Idaho Department of Water Resources

CROSS-PETITION FOR JUDICIAL REVIEW - 1

1 ("IDWR") entered on about November 7, 1997. This cross-petition is filed pursuant to I.C.
2 § 42-1701A, and 67-5270; I.R.C.P. 84(g); and the Petition filed by Jeff Sessions d/b/a
3 Round Mountain Ranch on about December 9, 1997.

4 1. Jurisdiction, venue, the state agency involved in this action, the district
5 court, the caption and headings, and the fact that oral presentations and a hearing have
6 been recorded are fully set forth in the Petition. This Cross-Petition adopts, without
7 repeating, those recitations.

8 2. Cross-Petitioners are aggrieved parties and entitled to participate fully
9 in judicial review, as they were parties to the proceedings before IDWR by virtue of their
10 status as Protestants who opposed the Applications filed by Petitioner.

11 3. Under I.R.C.P. 84(f) and (g), Cross-Petitioners give the following
12 preliminary statement of issues for review without waiving their rights to file a separate
13 statement of issues within fourteen days after filing this Cross-Petition.

14 a. The finding of fact are not supported by substantial and competent
15 evidence on the record as a whole.

16 b. The finding of fact, conclusions of law and orders are based on
17 evidence which was not made part of the record below and/or not
18 made part of the record in a manner which provided the Cross-
19 Petitioners notice and an opportunity to prepare and meaningfully
20 respond, as is required constitutionally, statutorily and by IDWR's
21 own Rules adopted under the APA.

22 c. The conclusions are not consistent with the law or IDWR rulings and
23 precedent.

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1 d. The Final Order and underlying decisions are arbitrary, capricious
2 and constitute an abuse of discretion which substantially prejudice
3 the rights of the Cross-Petitioners.

4 4. Cross-Petitioners request that the Court enter an order requiring
5 IDWR to disclose and serve on the parties all information it received, reviewed, considered
6 or otherwise consulted which was not made part of the record and/or disclosed at the
7 February 21 and 22, 1996, contested case hearings.

8 WHEREFORE, Cross-Petitioners ask the Court to review the proceedings
9 below, allow and order that the record be supplemented as set forth in paragraph 4, and
10 enter an order and a judgment that reverses, vacates and/or modifies the decisions and
11 Final Order of IDWR, or alternatively, remand the case for further proceedings consistent
12 with the law.

13 Dated this 22nd day of December, 1997.

14 HEPWORTH, LEZAMIZ & HOHNHORST,
15 CHARTERED

16 By: Patrick D. Brown
17 PATRICK D. BROWN
18 - Attorneys for Cross-Petitioners

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CERTIFICATE OF SERVICE

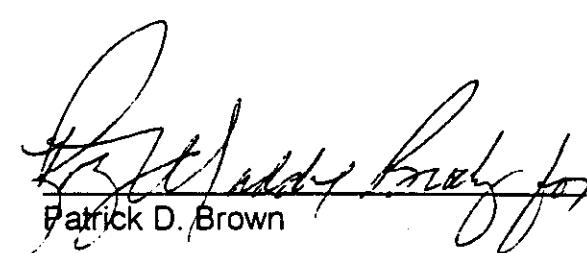
The undersigned, a resident attorney of the State of Idaho, with offices at 133 Shoshone Street North, Post Office Box 389, Twin Falls, ID, 83303, and one of the attorneys for the cross-petitioners in this matter, certifies that he caused to be served a copy of the above and foregoing document on the 22nd day of December, 1997, as follows:

Roger Ling, Esq.
Ling, Nielsen & Robinson
615 H. Street
P. O. Box 396
Rupert, ID 83350

☐ Hand Delivered
☒ U.S. Mail
☐ Overnight Mail
☐ Telecopy (Fax)

Phillip J. Rassier, Esq.
Deputy Attorney General
Idaho Dept. of Water Resources
1301 N. Orchard St.
Boise, ID 83706

☐ Hand Delivered
☒ U.S. Mail
☐ Overnight Mail
☐ Telecopy (Fax)


Patrick D. Brown

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Filed 12/18/97

F. Randall Kline, Esquire
F. RANDALL KLINE, CHARTERED
427 N. Main St., Suite L
P.O. Box 397
Pocatello, Idaho 83204-0397
Telephone: (208) 232-9007

COPY

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DEC 22 1997

Attorney for Petitioner

Department of Water Resources

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHRIS PEIN d/b/a GIBSON JACK)
JOINT VENTURE a/k/a WILDHORSE)
RIDGE SUBDIVISION,)

Case No. CVOC-97-02001

Judge:

Plaintiff,)

PETITION FOR JUDICIAL REVIEW

vs.)

Fee Category: R-2

Fee: \$ 72.00

IDAHO DEPARTMENT OF WATER)
RESOURCES,)

Defendants.)

JURISDICTION: Judicial review is sought pursuant to the Idaho Rules of Civil Procedure, including Rule 84 I.R.C.P.; Idaho Code § 67-5270 et seq.; and § 67-6501 et seq. This action arises in Bannock County and, therefore, it is appropriate to bring this matter before the Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock.

GENERAL STATEMENT OF CASE CATEGORY:

This case arises from an applications for water permit. On July 12, 1996, Gibson Jack Joint Venture applicant filed ten (10) applications for permit for domestic water for domestic purposes with the Department of Water Resources seeking to have wells drilled in the Gibson Jack area.

The applications were protested by Richard Hollingsworth and, ultimately, Clark Kelley and Everett Diller were permitted to intervene. The hearing was conducted on October 22, 1996 in

Pocatello, Idaho and continued on October 30, 1996. The uncontroverted testimony of two expert witnesses indicated that there was sufficient water for domestic purposes including the irrigation of 1/2 acre per lot. The Department of Water Resources partially approved the application subject to conditions.

"IT IS HEREBY ORDERED that application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08180, 29-08181, 29-08182, 29-08183, and 29-08184 are PARTIALLY APPROVED to allow diversion for domestic purposes limited to in-house culinary use and water for domestic animals.

IT IS FURTHER ORDERED that the permits are conditioned as follows:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before January 1, 2003.

2. The approved permits are subject to all prior water rights.

3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.

4. The permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

5. A well drilled pursuant to this permit must be located at least 600 feet from any existing well. Well spacing closer than 600 feet must be approved by the Department of Water Resources.

6. The subdivision covenants and restrictions must limit water use to in-house culinary use and water for domestic animals only.

7. A homeowners association must be formed by the developer and actively enforce bylaws which set forth the water use restrictions.

8. All outside spigots on homes built in the subdivision must be contained in breakable enclosures and are only to be used in an emergency.

9. All deeds executed by the permit holders to original lot owners must contain a restriction that the water right is limited to in-house use and water for domestic animals.

10. Diversion of water for irrigation or any other purpose outside the authorized culinary use and water for domestic animals is cause for the director of the department to prevent water delivery from a well until the illegal use is curtailed, civil penalties (if any) are paid, and mitigation (if any) for injury to senior water rights is made as required by the director.

IT IS FURTHER ORDERED that points of diversion and places of use within Wildhorse Ridge Subdivision are further defined as:

1. Well #1 is located between Lots 1 and 2, and serves Lots 1, 2, 19, and 20 under Permit No. 29-08175.

2. Well #2 is located between Lots 3 and 17, and serves Lots 3, 4, 17, and 18 under Permit No. 29-08176.

3. Well #3 is located at the common corner of Lots 5, 6, 13, and 14, and serves Lots 5, 6, 13, and 14 under Permit No. 29-08177.

4. Well #4 is located within Lot 9, and serves Lots 7, 8, and 9 under Permit No. 29-08178.

5. Well #5 is located between Lots 11 and 12, and serves Lots 10, 11, 12, and 15 under Permit No. 29-08179.

6. Well #6 is located between Lots 16 and 24, and serves Lots 16, 24, and 25 under Permit No. 29-08180.

7. Well #7 is located between Lots 23 and 37 and serves Lots 21, 22, 23, and 37 under Permit No. 29-08181.

8. Well #8 is located between Lots 33 and 34, and serves Lots 33, 34, 35, and 36 under Permit No. 29-08182.

9. Well #9 is located between Lots 30 and 31, and serves Lots 29, 30, 31, and 32 under Permit No. 29-08183.

10. Well #10 is located between Lots 26 and 27, and serves Lots 26, 27, and 28 under Permit No. 29-08184.

IT IS FURTHER ORDERED that the use of water under this permit for purposes other than in-house culinary water and water for domestic animals is hereby DENIED.

IT IS FURTHER ORDERED that if the applicants want to seek water for irrigation or other uses, they may conduct additional studies that demonstrate sufficient water is available and may reapply for appropriation in the future for those purposes."

The limitations imposed would not allow any yard watering under this final order.

A Motion for Reconsideration was filed and an Order Denying the Petition for Reconsider was issued November 25, 1997.

Venue is proper in this manner before the District Court of the Sixth Judicial District, State of Idaho, in and for the County of Bannock, as the land is located within Bannock County and the application was processed in Bannock County.

The name of the entity for which the judicial review is sought is the Idaho Department of Water Resources.

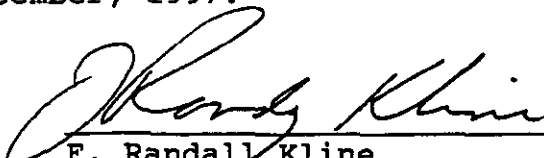
The title of the District Court to which the action is taken is the Sixth Judicial District, State of Idaho, in and for the County of Bannock.

The appeal is taken from the Amended Final Order and the Order Denying the Petition for Reconsideration, together with all prior orders. The conditions are not supported by the record and are not arbitrary and capricious. All administrative remedies have been exhausted.

The last order appealed from was dated November 25, 1997. The matter was recorded and transcripts have been requested.

The statement of issues will be filed within fourteen (14) days from the date of this Petition.

DATED this 18th day of December, 1997.


F. Randall Kline
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18 day of December, 1997, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, Idaho 83402

 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax

Richard Hollingsworth
9502 Gibson Jack
Pocatello, Idaho 83204

 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax

Clark Kelly
9685 Heather Rd.
Pocatello, Idaho 83204

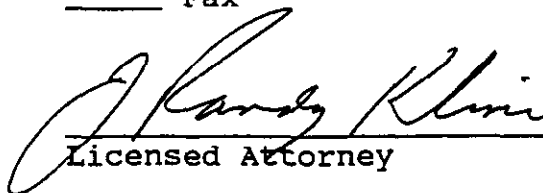
 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax

Everett Diller
2917 N. Stephanie Rd.
Pocatello, Idaho 83204

 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax

Karl J. Dreher, Director
Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax


Licensed Attorney

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

November 28, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the matter of Application for Permit Nos. 29-08175 through 29-08184 in the name of Gibson Jack Joint Venture aka Wildhorse Ridge Subdivision

Dear Interested Parties:

I have enclosed an order which denies your petitions for reconsideration in connection with the above referenced matter.

Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter of 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 a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within 21 days to grant or deny a petition for reconsideration, whichever is later. 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.

Sincerely

L. GLEN SAXTON, Chief
Water Allocation Bureau

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Enclosure

c: IDWR - Region

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Department of Water Resources

Received by
fax 11/13/97.

EVERETT D. DILLER
2917 North Stephanie
Pocatello, Idaho 83204
208-234-2202

Richard M. Hollingsworth
9502 Gibson Jack
Pocatello, Idaho 83204
208-234-2234

Residents next to Gibson Jack Joint Venture aka Wildhorse Ridge
Subdivision

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS 29-08175, 29-)
08176, 29-08177, 28-08178, 29)
08179, 29-08180, 29-08181, 29-))
08182, 29-08183, 29-08194, IN)
THE NAME OF GIBSON JACK JOINT)
VENTURE AKA WILDHORSE RIDGE)
SUBDIVISION.)

PETITION FOR RECONSIDERATION

First: our questions and concerns in the past have never
been answered. Questions and concerns have been asked by Richard
Hollingsworth and Everett Diller, and other surrounding residents
- why have they not been answered or at least given direction on
how to go about getting answers ?

Question: on the AMEND FINAL ORDER page 10. Under this
title: IT IS FURTHER ORDERED that the permits are conditioned as
follows:

We don't completely understand Items number #1, #2, and #3.
Especially on Item #2, with reference to all prior water rights,
when we feel that ours are soon to be violated and taken away by
your department.

Item #1 - does this mean they have six years to play with
the permits.

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COMES NOW - the residents surrounding the Gibson Jack Joint Venture aka Wildhorse Ridge Subdivision, and hereby ask, that you disallowed any further drilling in our area and go back to your original order. The developers have not proven that adequate water exist for their purposes and yet, the surrounding residents, have given testimony showing the water difficulties that are presently existing. It is wrong to allow additional wells, when you even stated in your AMENDED FINAL ORDER on page nine, and I quote "Domestic water users are intolerant of deficiencies in water supply. Most domestic water users expect to be able to irrigate some landscaping associated with their homes. Domestic water users have an almost absolute expectation that there is sufficient water for inhouse culinary use; water to drink; to shower with, to wash clothing or to flush a toilet." end of quote.

With this statement, why are you allowing the permits ?? In the future your present decision will affect all of us who are presently surrounding this subdivision, because we will have to pick up the cost to bring in the city water into our area, when the existing water table is depleted. The cost of future court actions, to retain our water rights, and the cost pushed on us if you allow these permits. Bring in the city water - do it right.

Mr. Karl Dreher, you have so many red flags out, waving infront of you, that the water needed for this subdivision is not there. On your AMENDED FINAL ORDER page 8, part #26. The testimony established that during periods of drought, the limited ground water supply in the Gibson Jack drainage may not supply

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sufficient water for both the proposed use and existing uses". Again - red flag - MAY NOT BE THERE - the testimony of all of us who have lived here, some for 15 years, should show and account for something, we are presently having problems with the present water situation. (OUR ARE HAS EXPERIENCED 15 TO 20 YEARS OF STRAIGHT DROUGHT - THIS YEAR HAS BEEN THE BEST FOR MOISTURE - BUT WHAT IF WE HAVE ANOTHER 10-15-20 YEAR DROUGHT PERIOD - WHEN EXISTING WELLS ARE SUCKING AIR AL-READY- DO NOT ALLOW THE PERMITS) LET THE DEVELOPER HOOK INTO CITY WATER AND RESOLVE THE PROBLEM OF WATER USEAGE AND FIRE PROTECTION.

On your AMENDED FINAL ORDER, page 8 item #29. No one has stated - as a protestant, or even stipulated that the developers have sufficient financial resources to develop this project. On the contrary it has been just the opposite - THE DEVELOPERS INVESTED MONEY RECEIVED FROM TOM IVERSON FROM A UNION PACIFIC RAILROAD SETTLEMENT - THEY ARE PROPOSING TO DO THE SUBDIVISION IN PHASES, BECAUSE THE FINANCES ARE NOT THERE. In the very first meeting held with Mr. Spackman, held at the Pocatello Airport, Richard Hollingsworth wanted to make a statement on there money situation, and Randy Kline the attorney got all upset, and stated it was not an issue. But your department sent me a questionnaire reflecting this before the meeting was held. The developers and their attorney would not allow us to go into this subject. It is on record what was said - the developers do not have the money to complete the project - only if the sales of the lots go through, which makes the money available. Mr. Guy Anderst has stated several times to Richard Hollingsworth and others at meetings -

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that if this project doesn't go through he'll loose everything he has. At one time Mr. Anderst was on vacation during the summer months during the 1997 year, and it was reported that he stated, if the well permits did not go through he and Chris Pein were going to pull out and leave Tom Iverson (the individual who put up the money to purchase the ground) and leave Mr. Iverson hanging alone. This comment came from Mr. Kelly Clark (who lives near the proposed subdivision) and other railroad workers.

Now with reference to YOUR FINAL ORDER DATED 11 JULY 1997, WAS WITHDRAWN AND HAS BEEN REPLACED BY A NEW FINAL ORDER.

AS MR. KARL DREHER, THE DIRECTOR OF DEPARTMENT OF WATER RESOURCES FOR THE STATE OF IDAHO, INDICATED IN HIS "ORDER DENYING PETITION FOR RECONSIDERATION AND WITHDRAWING FINAL ORDER" DATED 6TH OF AUGUST 1997 WHERE HE MAKES THE COMMENTS THAT THE APPLICANTS PETITION FOR CONSIDERATION WAS UNTIMELY, THEREFORE, MUST BE DENIED - THIS DENIAL SHOULD HAVE BEEN UPHOLD DUE TO THE FACT THAT MR. KLINE IS AN ATTORNEY, WELL VERSED IN THE TIME LIMITS, AND THE PROCEDURES AS OUTLINED BY THE DEPARTMENT OF WATER RESOURCES. BEING THAT THE REQUEST WAS UNTIMELY AND IT WASN'T EVEN SIGNED BY MR. KLINE, SO IT SEEMS TO SHOW THAT IT WAS SIMPLY A DELAY TACTIC OR AN ATTEMPT TO DISCREDIT PREVIOUS TESTIMONY OF THE PRESENT HOME OWNERS, BORDERING THE PROPOSED SUBDIVISION.

THE DIRECTOR THEN SET A CONFERENCE TO DISCUSS THEIR ISSUES WAS SCHEDULED FOR WEDNESDAY, 27 AUGUST 1997 AT 1:30 PM, THIS WAS CANCELLED WHICH WAS A GREAT INCONVIENCE FOR MOST OF THE RESIDENCE

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THAT PLANNED TO ATTEND, DUE TO THE FACT, THEY HAD TO USE VACATION TIME TO GET THE TIME OFF FROM THEIR PRESENT EMPLOYMENT AND MAKE OTHER ARRANGEMENTS IN ORDER TO ATTEND.

WITH REFERENCE TO LETTER DATED 22ND AUGUST 1997, BY MR. KLINE, SENT TO YOUR OFFICE. I QUOTE "1. THE AVAILABILITY OF WATER AND ALLEGING THAT THERE IS SUFFICIENT QUANTITY TO MEET THE NEEDS OF THE DEVELOPMENT AND ALSO PRIOR APPROPRIATORS IN THE WELL CONFIGURATION PURPOSED", END OF QUOTE. PEOPLE ON THE NORTH, SOUTH AND THE EAST SIDE OF THE PROJECT HAVE GIVEN TESTIMONY OF HAVING WATER PROBLEMS IN THE PAST, AND THAT THIS HAS BEEN A CONTINUING PROBLEM.

I OBJECT TO MR. KLINE REHASHING THE TESTIMONY ALREADY GIVEN BY THOSE WHO KNOW ABOUT THE WATER SITUATION AT FIRST HAND, AND BEING THE RESIDENCE'S WHO HAS LIVED AROUND THE SUBDIVISION USING WATER FOR YEARS HAVE TESTIFIED TO. I OBJECT TO ALLOWING A CONTINUING PERIOD OF MORE TESTIMONY. THAT WHICH HE STATES IN THIS SECTION MARKED AS NUMBER ONE, HAS ALL READY BEEN GONE OVER, AS THE RECORD SHOWS.

I HAVE SPOKEN WITH MR. BYBEE, WHO RESIDES NORTH OF THE PROPOSED SUBDIVISION, IN SEPTEMBER OF 1997, AND HE RELATED TO ME THAT HIS WELL HAS BEEN BREAKING SUCTION, (OR SUCKING AIR), AND THAT HE WAS UNABLE TO WATER HIS LAWN IN THE LAST COUPLE OF MONTHS, AND THAT IT WAS DRYING UP EVEN THOUGH IT HAS BEEN A VERY DAMP YEAR, CONSIDERED TO THE PAST YEARS OF DROUGHT WE'VE BEEN HAVING.

I HAVE ALSO TALKED WITH MIKE NIX, WHO LIVES NORTH EAST OF THIS SUBDIVISION. HE HAS STATED THE CERTAIN TIMES HE CAN RUN

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WATER AND WHILE DOING SO, HE HAS BEEN EXPERIENCING DISCOLORATION OF WATER FLOW THROUGH HIS WATER LINES. EVEN THOUGH HIS LAWN IS VERY SMALL AND HAS A FEW SMALL TREES TO WATER, THE WATER RECHARGE HAS NOT BEEN THEIR. HIS WELL IS ROUGHLY UNDER 2 YEARS OLD.

WITH REFERENCE TO NUMBER #2, AND I QUOTE "A DETERMINATION OF THE REASONS WHY OTHER WELLS IN THE AREA HAVE FUNCTIONED SATISFACTORILY, YET OTHERS HAVE NOT", END OF QUOTE.

THIS ALSO HAS BEEN DETERMINED AND GONE OVER, AND DISCUSSED AT THE MEETING HELD BY MR. SPACKMAN. THEY KEEP PUTTING THE BLAME ON THE WAY THE WELLS WERE DRILLED AND THE CONSTRUCTION OF THE WELLS, AND POOR MAINTENANCE, YET, THE MAN WHO DRILLED THEIR TEST WELL, WHICH WAS BOB CUSHMAN OF BLACKFOOT, IDAHO, WAS THE SAME INDIVIDUAL WHO DRILLED MY WELLS. AND HIS TESTIMONY WAS GIVEN AT THE HEARING, WHICH MR. KLINE DID NOT REQUEST A TRANSCRIPT OF, THAT PORTION OF HIS TESTIMONY IS AS MUCH REVELANT AS WHAT HE HAS REQUESTED.

WITH REFERENCE THE LAST ITEM, MARKED AS #3, AND I QUOTE "THE IMPACT OF THE PROPOSED WELLS ON OTHER EXISTING WELLS IN THE AREA", END OF QUOTE. THIS HAS ALSO BEEN TESTIFIED TO AT THE HEARING, WITH NO EVIDENCE, JUST SPECULATIONS. TO GIVE A EXAMPLE, THEIR IS 100 TO 150 FEET BETWEEN MY TWO WELLS, AND YET ON MY HOUSE WELL IT IS BREAKING SUCTION, AND YET ON MY IRRIGATION WELL, I AM HAVING NO PROBLEMS. THAT SHOWS ME THAT THEIR IS DIFFERENT LEVELS ON THE AQUIFER. THEREFORE, EVEN THE TEST WELL OF CHAD NIELSEN'S WELL MIGHT BE ON THE SAME ELEVATION LEVEL, THEY WOULD PROBABILITY BE ON DIFFERENT AQUIFER'S.

THE TEST WELL THEY DRILLED, SHOWN ON THE WELL LOG AS

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IVERSON'S WELL. IT WAS STATED BY THE WELL WITCHER, THAT THE DEVELOPERS USED, THAT IF THEY DRILLED DEEPER, AFTER GETTING 20 GALLONS PER MINUTE, THE WATER WOULD JUST COME GUSHING OUT, OVER FLOWING OUT OF THE PIPE. WELL, THE DEVELOPERS DID IT, AND NOTHING CHANGED AT ALL. BUT A PROBABLE DECREASE IN WATER FLOW. POINT BEING, THE AQUIFER IS AT ONE LEVEL AT THE TEST WELL, WHICH SHOOT DOWN THE TESTIMONY BY THEIR EXPERTS THAT MORE AQUIFERS EXIST BELOW OTHERS. IT IS ALL SPECULATION, IN MY OPINION, NO FACTS, BUT THEIR SPECULATIONS AFFECT MY FUTURE WATER AVAILABILITY.

ON THE TEST WELL, I WOULD LIKE YOU TO REVIEW THE TESTIMONY OF MR. CUSHMAN, WHEN HE STATED WHY HE PUT 2 INCH PERFORATIONS AND 1 INCH AND SO FORTH. MR CUSHMAN STATED, THE DEVELOPERS WANTED TO MAKE SURE THAT THE WATER FLOW WAS HIGH. AND YET WHEN ASKED WHY MY WELL RECEIVED NONE, HE STATED IT DIDN'T NEED ANY PERFORATIONS.

THE TEST THAT THEY CONDUCTED ON THESE TWO WELLS, ONE BEING THE TEST WELL AND THE OTHER BEING CHAD NEILSONS WELL. THE NIELSON WELL HAD INSUFFICIENT WAITING TIME AFTER DRILLING TO RECORD A STABLE WATER LEVEL. THE NIELSEN WELL HAD NEVER BEEN USED FOR DOMESTIC USE, OR WATERING OF STOCK OR YARD USAGE. IT WAS A IDLE WELL.

IT IS MY OPINION THAT THE DEVELOPERS HAVE USED EVERY MEANS TO SNOW BALL THE FACTS, AND EVEN DECEIVE YOU IN ORDER TO PUSH THIS PROJECT THROUGH INCORRECTLY, AND CAUSING A GREAT HARDSHIP ON THE FUTURE RESIDENCE AND PRESENT RESIDENCE SURROUNDING THE SUBDIVISION.

I AM OPPOSED TO THE USE OF A PARTIAL TRANSCRIPT OF THE

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PROCEEDINGS. BECAUSE IT WAS A TWO DAY HEARING, AND THIS IS ONLY A SMALL PART OF THE EVIDENCE AND TESTIMONY GIVEN BY ALL THOSE INVOLVED. TO EXTRACT TESTIMONY OF TWO EXPERT WITNESSES, IS NOT A ACCURATE PICTURE, AND I FEEL THEY ARE TRYING TO DECEIVE YOU FOR A CHANGE OF YOUR PAST FINAL ORDER.

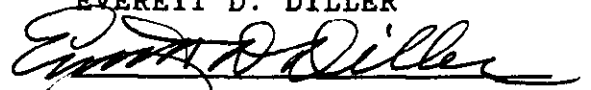
MR. WELHAM'S REPORT WAS TAKEN FROM THE EXISTING WELL LOGS OF THE SURROUNDING RESIDENTS, WHICH REFLECTS THE CONDITIONS AT THAT TIME WHEN THE WELL WAS FIRST DRILLED. ALL OF HIS CHARTS AND GRAPHS REFLECT THAT CONDITION - WHEN THE WELLS WERE ORIGINALLY DRILLED. HIS REPORT - OR AS YOU AND THE DEVELOPERS REFER TO IT AS A "EXPERTS REPORT" IS FALSE AND WRONG. IT DOES NOT SHOW THE EXISTING WELLS SURROUNDING THIS SUBDIVISION, AND REAL PRESENT WATER SITUATION AS IT IS NOW IN 1997. HIS REPORT DOES NOT REFLECT THE DRAWDOWN PROBLEM WHEN EXISTING WELLS ARE IN USE, NOR THE RECALL TIME TO REBUILD THE WELL BACK TO A PROPER WATER LEVEL (AS TO NOT BURN UP THE SUBMERGIBLE PUMPS). THERE REPORT WAS TO DECEIVE YOU -,AND IT APPEARS THEY HAVE SUCCEEDED. HIS REPORT DOES NOT SHOW THE PRESENT SITUATION - EVEN AT THE TIME OF YOUR DEPARTMENTS FIRST HEARING. WE HAVE REQUESTED, OVER AND OVER AGAIN, THAT A PROPER STUDY SHOULD BE DONE - BEFORE EVER ISSUING THESE WELL PERMITS. I FEEL THAT YOUR DEPARTMENT IS GOING HALF COCKED ON THE ISSUANCE OF THESE PERMITS, WITH NO CONSIDERATION TO THE COST AND PROBLEMS AND HARDSHIPS FOR THOSE WHO ARE PRESENTLY LIVING AROUND THIS SUBDIVISION - WHO HAVE WELLS, AND HAVE GIVEN TESTIMONY TO THE WATER DIFFICULTIES WE ARE EXPERIENCING.

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I FEEL VERY STRONGLY, TO BE FAIR WITH BOTH SIDES, THAT A FULL TRANSCRIPT SHOULD OF BEEN PROVIDED FOR YOU. TO GIVE YOU A FULL VIEW OF THE TESTIMONY GIVEN AND SUBMITTED. COMMON SENSE SHOULD TELL YOU AS IT DOES ME, THAT THEY ARE ATTEMPTING TO TAKE YOUR MIND OFF THE WHOLE PICTURE AND JUST FOCUS ON THE TESTIMONY OF TWO PEOPLE, A PARTIAL TRANSCRIPT IS WRONG. MR KLINE REQUESTED AND INSISTED THAT MR. HOLLINGSWORTH AND I PROVIDE THE COURT WITH A FULL TRANSCRIPT OF ALL THE MEETINGS BEFORE OUR APPEAL PROCESS WOULD BE ACCEPTED BY THE BANNOCK COUNTY COMMISSIONERS. HE QUOTED LAW AND BYLAWS STATING IT NEEDED TO BE DONE. SO I QUESTION WHY THIS PROCEDURE OF HIS IS ALLOWED BY YOUR DEPARTMENT.

PLEASE REFER TO ADDITIONAL INFORMATION SUBMITTED WITH THIS REQUEST - A SEPARATE ATTACHMENT. REFER TO ITEMS MARKED WITH WHITE TABS, AND ARE HIGH LIGHTED IN YELLOW. THANK YOU FOR YOUR CONSIDERATION.

EVERETT D. DILLER



RICHARD M. HOLLINGSWORTH



DATED: 11 NOVEMBER 1997

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The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

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NOV 13 1997

Department of Water Resources

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

November 12, 1997

Karl J. Dreher, Director
State of Idaho
Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83720-0098

VIA: FEDERAL EXPRESS

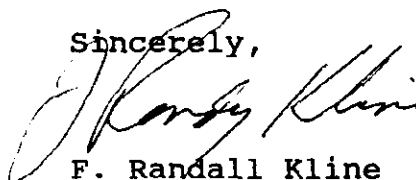
Re: In the Matter of Application for Permit Nos. 29-08175
through 29-08194 in the name of Gibson Jack Joint Venture
a/k/a Wildhorse Ridge Subdivision

Dear Mr. Dreher:

Enclosed for please find the Petition for Reconsideration of
the Amended Final Order dated October 30, 1997, which I am filing
on behalf of my clients, Gibson Jack Joint Venture a/k/a Wildhorse
Ridge Subdivision.

If you have any questions, please do not hesitate to contact
me.

Sincerely,



F. Randall Kline

FRK:ljw

Encl

c: Chris Pein/Guy Anderst
Harold Jones
Richard Hollingsworth
Clark Kelly
Everett Diller

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Department of Water Resources

F. Randall Kline, Esquire
F. RANDALL KLINE, CHARTERED
427 N. Main St., Suite L
P.O. Box 397
Pocatello, Idaho 83204-0397
Telephone: (208) 232-9007

Attorney for Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 29-08175, 29-)
08176, 29-08177, 28-08178, 29-) PETITION FOR RECONSIDERATION
08179, 29-08180, 29-08181, 29-)
08182, 29-08183, 29-08194 IN)
THE NAME OF GIBSON JACK JOINT)
VENTURE a/k/a WILDHORSE RIDGE)
SUBDIVISION.)

An Amended Final Order was issued on the 30th day of October, 1997. Pursuant to Idaho Code § 67-5246(4), a Petition for Reconsideration may be filed within fourteen (14) days of the service of that order. The applicants Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision request that the matter be reconsidered prior to seeking judicial review.

The basis for the request for reconsideration is there is nothing in the record which disputes that which was concluded by John Welhan and Sherl Chapman that there is sufficient water in the aquifer for the uses proposed by the application, including one-half acre of irrigation per lot.

The assertion that there is by implication "insufficient water" for the proposed use to include landscape irrigation during low precipitation years is not supported in the record. Mr. Welhan clarified his testimony at page 43 by saying:

"So, no, I'm definitely not saying that we've got a long term problem. As long as we have annual recharge and replenishment, it appears that the aquifer is capable of replenishing itself and sustaining the kind of usage we are talking about". (What is proposed in the application).

A specific exception is made with regard to finding of fact #15 as mischaracterizing the testimony of the parties. Both Chapman and Welhan testified that there was sufficient water for the proposed use and no evidence was ever presented to challenge that. The assertion that "the testimony of Welhan either conflicted with this conclusion or was uncertain to support the conclusion" is not supported by the record. Further, the conclusion of Chapman "not being supported by sufficient evidence" is patent nonsense. He did present his information. Any challenge with regard to that information should have been done by the protestants. Chapman did indicate that he was familiar with the ground. He had studied it years before. He had reviewed Welhan's report and it was his conclusion that there would be and was sufficient water to support the proposed development including the irrigation of one-half acre.

What is unsupported is the adjacent lot owners who are opposing the development of the subdivision, none of whom provided any objective evidence, in any context, and in fact they sustained declines. None of the protestants produced objective findings with regard to nonavailability of water; none of them produced any evidence as to why they had sustained any decrease in water, if any; none had their well tested or inspected; and, none could produce any logs, data, records, or measurements showing decrease in water, decrease in water quality or quantity, or any other

objective data. They could not testify whether their well decreased production, if in fact they had, because of hard water, because of settling, or because of a variety of other potential reasons. None of the protestants were able to demonstrate, in any fashion, any objective information or data as to why they were having problems with their wells, if in fact they were having problems with their wells, which remains an item of dispute.

The applicants in this matter are not seeking to irrigate all the lands within the proposed subdivision. They are seeking to irrigate or have availability for watering up to one-half acre of land surrounding their adjacent residential houses. Sherl Chapman concluded that there was sufficient water for ten (10) domestic wells, each with a production rate of between 25 and 30 gallons per minute. None of the protestants were able to demonstrate that his values were in error.

Further, the concerns regarding an extended drought seem to be ill-founded. Dr. Welhan testified that there was sufficient water with regard to the test well and Pocatello had recently completed an extended drought period, yet there seems to be sufficient water at the conclusion of the drought. I direct the attention to page 12 and 13 wherein Mr. Welhan testified:

"Kline: Do you think there is sufficient water?

Welhan: Yes I do. As long as you realize that water, most of it being withdrawn from storage, so we have to understand what that storage, that bank account is. As long as our estimates right now are somewhere in the right ball park, close to the actual values that we should be using, then yes we do have enough water in it.

Kline: Is there evidence to indicate that there is insufficient water for the purpose that this applicant is seeking?

Welhan: No.

Kline: Is the proposed use contrary to the conservation of Water Resources within the State of Idaho?

Welhan: It's consistent with. . ."

It is additionally requested that the Request for Reconsideration filed by the applicants on June 24, 1997 additionally be reviewed.

It is further requested that the Petitioners have the opportunity to augment and supplement the record with regard to additional information from Mr. Welhan and Mr. Chapman, the only experts who testified in this matter.

At page 7 of the transcript, Dr. Welhan indicates:

". . .I have to give my expert opinion. Which is, I believe there is enough water based on the information we have in hand today."

At pages 42 and 43 of the record, when questioned about drought periods and declines, apparently the fact finder is making assumptions which again appear not to be supported by the record. Welhan testified:

"No. No. It appears to be continually recharged, replenished. . .As long as we have annual recharge and replenishment, it appears that that aquifer is capable of replenishing itself and sustaining the kind of usage we are talking about".

It is asserted that anyone can take a matter to extremes, but after the periods of drought recently sustained in Pocatello, it appears that based on Dr. Welhan's testimony a typical six or seven year drought would not significantly adversely effect the availability of water. Even with that typical drought, there would be sufficient water to meet the proposed use.

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CONCLUSION

The uncontradicted testimony of experts suggests that there is sufficient water in the aquifer as testified by both Mr. Welhan and Mr. Chapman. That information was supported by credible evidence and was unchallenged by the protestants. The protestants have made statements, yet have provided absolutely no objective evidence to support their allegations. None have engaged in any well testing; none have engaged in well inspection; none have attempted to determine how or why their wells have declined in production, if in fact they have; and, none have presented any objective information that their wells have in fact declined in production.

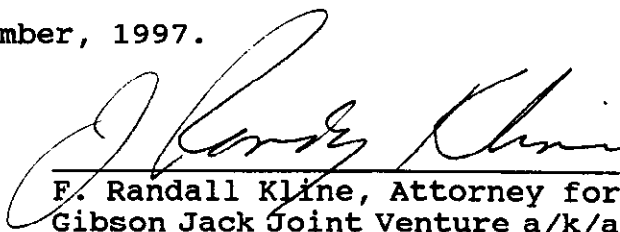
The testimony of the experts indicate that the criteria required by State code for granting wells indicates that there is a sufficient quantity of water for the proposed use that remains uncontroverted. While one may speculate an extended drought may cause a depletion of water, the extreme is that any extended drought may have an impact on residential water users.

The fact is that in usual and customary situations, even for a six to seven year drought period, there would be sufficient water to meet the applicants proposed use of in-house use and outside watering of up to one-half acre. It is submitted that to limited the matter to exclusively in-home use with no outside yard watering permitted is not consistent with the record as it exists.

It is further requested that the record remain open for additional clarification by both Mr. Chapman and Mr. Welhan.

It is further submitted that the record, as it exists, supports the assertion that the applicants' proposed use should be granted, consistent with Idaho State law.

DATED this 12th day of November, 1997.


F. Randall Kline, Attorney for
Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision (the
applicants)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November, 1997, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, Idaho 83402

☒ U.S. Mail
☐ Express Mail
☐ Hand Delivery
☐ Fax

Richard Hollingsworth
9502 Gibson Jack
Pocatello, Idaho 83204

☒ U.S. Mail
☐ Express Mail
☐ Hand Delivery
☐ Fax

Clark Kelly
9685 Heather Rd.
Pocatello, Idaho 83204

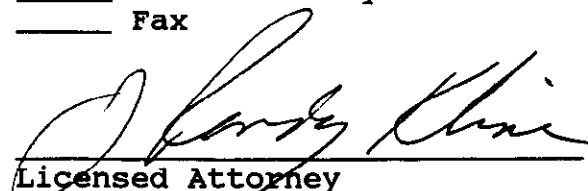
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☐ Hand Delivery
☐ Fax

Everett Diller
2917 N. Stephanie Rd.
Pocatello, Idaho 83204

☒ U.S. Mail
☐ Express Mail
☐ Hand Delivery
☐ Fax

Karl J. Dreher, Director
Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

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Licensed Attorney

11/12/97[d:\frk\97-1031.pei\reconsider.2nd]

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Telephone: (208) 232-9007

Attorney for Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 29-08175, 29-)
08176, 29-08177, 28-08178, 29-) PETITION FOR RECONSIDERATION
08179, 29-08180, 29-08181, 29-)
08182, 29-08183, 29-08194 IN)
THE NAME OF GIBSON JACK JOINT)
VENTURE a/k/a WILDHORSE RIDGE)
SUBDIVISION.)

COMES NOW the applicants, Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision, and hereby give notice and requests
that there be a reconsideration of the final order dated July 11,
1997, issued by Karl J. Dreher, Director.

1. This Petition for Reconsideration is timely, in as
much as it is filed within fourteen (14) days of the service of the
Order. A specific exception is taken to the determination that
there is insufficient water for the proposed use. The proposed use
sought to limit use of the water for culinary use and for
approximately one-half acre of lands immediately adjacent to a
residential dwelling. The same would be enforced through the terms
of restrictive covenants, deed and plat restrictions. The Proposed
Order limited water usage to in-home culinary use and stock water.
The provisions to allow stock watering as defined under Idaho law
would be more than sufficient to accommodate the watering of
approximately one-acre of shrubbery and lawn. The assertion that

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home owners may not be appraised of the water restrictions apparently suggests that the agency does not understand deed restrictions, restrictive covenants for plat limitations placed facially on the plat.

2. Further, discussion with regard to prior court decisions seem not to be relevant. The initial proposal called for much higher density of development and irrigation of the entire 119 acres. This is not the case nor has it ever been the proposal of this applicant to do so.

3. In regard to "findings of fact #4", it should be noted that the approvals were appealed at the time of the hearing. However, under the current status, all approvals have been granted by the City of Pocatello and County of Bannock.

4. Also, factually, item #4 is not consistent with the record. It was not the applicant who decided one well for every three or four residents would be better, but was a suggestion made by the Department of Water Resources.

5. It should be further noted that at "findings of fact #12", Welhan testified that he believed there would be sufficient water to meet the needs of the proposed use as it was suggested. At no time did Welhan indicated that he did not think that there would be sufficient water to meet the proposed use together with the existing uses. Further, proper well spacing would not adversely affect prior wells.

6. In regard to "findings of fact #14", Sherl Chapman did, in fact, testify that he was familiar with the water levels in the area and he concluded that there was sufficient water for ten domestic wells, each with a production rate of between 25 and 35

gallons per minute and that those were sustainable. Although he concluded that the aquifer would not produce sufficient water for irrigation of the entire 119 acres within the proposed subdivision, that is not what this applicant is proposing and is, therefore, irrelevant.

7. In regard to "findings of fact #16", Richard Hollingsworth did not testify as to why his well had declined, what the problems of his well were, nor how it had been tested. Everett Diller said that he had some problems with his well, but, again, it is a shallow well and he did not indicate that his well had been tested or determined as to why its reduced productivity. Diller did testify, as stated in "findings of fact #18", that he has not experienced problems with his irrigation wells.

8. In regard to "findings of fact #25", it is disputed that the ground water supply in Gibson Jack would not be sufficient for proposed use and existing uses during drought or lower than average precipitation uses. Pocatello has recently completed an extended drought period and, at the conclusion of that drought, the test well indicated that there would be sufficient water. Other wells in the area did not experience the problems experienced by a few with their wells, and it is uncertain why those others experienced problems.

9. The applicants take exception to "findings of fact #26" in that there would be sufficient water in the area to meet the proposed use and the existing uses. With the proposed use including use of storage tanks, there would be sufficient water to provide in-house culinary use and provide for up to one-half acre immediately adjacent to the residences for an appropriate yard.

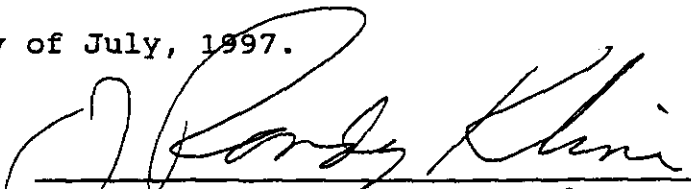
Although present water users may be experiencing in-house culinary problems, it is unknown whether that is because their wells are simply too shallow, whether their wells are plugged because of calcification or settling, or for whatever other reasons and virtually none had their wells inspected or tested to determine why there was a decrease in the productivity of their wells.

10. Both experts testified that there would be sufficient water to meet the proposed applicant's request and that it would not have a significant impact on adjacent wells. That fact remains undisputed in the record. The protestants offered no expert testimony.

11. Therefore, it is specifically requested that a finding be made that there is sufficient water to meet the proposed application and requested that the issuance of permits be granted.

12. It is also requested that a transcript of the hearing held on October 22, 1996 and continued on October 30, 1996, before the hearing officer Gary Spackman, be forwarded to F. Randall Kline, attorney for Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision.

DATED this 24th day of July, 1997.


F. RANDALL KLINE, Attorney for
Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of July, 1997, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, Idaho 83402

☒ U.S. Mail
☐ Express Mail
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☐ Fax

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9502 Gibson Jack
Pocatello, Idaho 83204

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Clark Kelly
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Pocatello, Idaho 83204

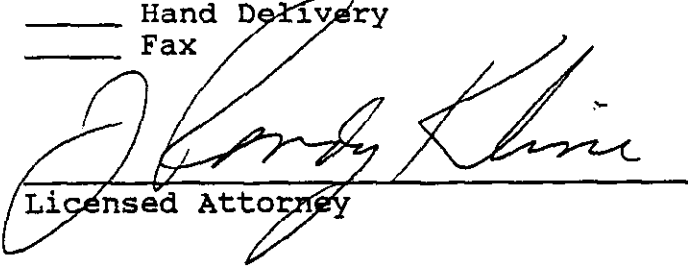
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2917 N. Stephanie Rd.
Pocatello, Idaho 83204

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Karl J. Dreher, Director
Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

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☐ Express Mail
☐ Hand Delivery
☐ Fax



Licensed Attorney

07/24/97[d:\frk\97-1031.pel\reconsider-pet]



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 30, 1997

RE: In the Matter of Application for Permit Nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 in the name of Gibson Jack Joint Venture, a.k.a. Wildhorse Ridge Subdivision

Dear Interested Parties:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) 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 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.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

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(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department 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 67-5246(4) Idaho Code.

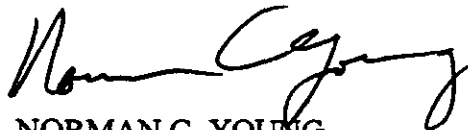
APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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 a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,



NORMAN C. YOUNG
Administrator
Water Management Division

Enclosure

cc: IDWR - Region, Dick Larsen

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The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

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WATER RESOURCES
WESTERN REGION

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

September 10, 1997

Gary Spackman, Hearing Officer
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Wildhorse Ridge Subdivision - Application for Water
Permit

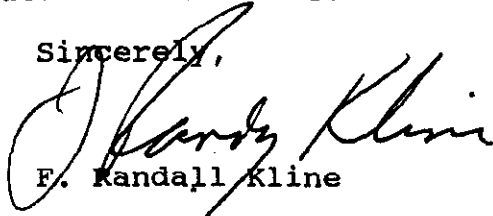
Dear Mr. Spackman:

Please note that with regard to the tapes that were forwarded to me from the Department of Water Resources, we have been unable to transcribe those to make any sense of them. Please advise as to the status of the transcription at your end.

Additionally, there was a discussion that the hearing, once the transcription is completed, would be rescheduled. Please advise as to the date for that hearing, if one is, in fact, necessary after the director's review of the transcript.

I appreciate your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



F. Randall Kline

FRK:ljw

c: clients

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The Law Offices of
F. Randall Kline, Chartered
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AUG 25 1997

Department of Water Resources

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

August 22, 1997

Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

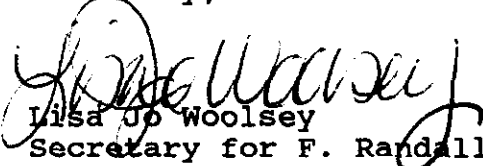
Re: In the Matter of Application for Permit Nos. 29-01875-29-01894 in the name of Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision

Dear Clerk:

Enclosed for filing please find the Request for Consideration of Additional Issues regarding the above-referenced matter.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lisa Jo Woolsey
Secretary for F. Randall Kline

FRK:ljw

Encl

c: Harold Jones
Richard Hollingsworth
Clark Kelly
Everett Diller
Karl J. Dreher, Director
Gary Spackman, Hearing Officer
Chris Pein

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AUG 25 1997

Department of Water Resources

F. Randall Kline, Esquire
F. RANDALL KLINE, CHARTERED
427 N. Main St., Suite L
P.O. Box 397
Pocatello, Idaho 83204-0397
Telephone: (208) 232-9007
Attorney for Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 29-08175, 29-)
08176, 29-08177, 28-08178, 29-) REQUEST FOR CONSIDERATION OF
08179, 29-08180, 29-08181, 29-) ADDITIONAL ISSUES
08182, 29-08183, 29-08194 IN)
THE NAME OF GIBSON JACK JOINT)
VENTURE a/k/a WILDHORSE RIDGE)
SUBDIVISION.)

COMES NOW Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision, by and through their attorney of record, F. Randall Kline of F. Randall Kline, and hereby requests that additional issues for consideration are:

1. The availability of water and alleging that there is sufficient quantity to meet the needs of the development and also prior appropriators in the well configuration purposed.
2. A determination of the reasons why other wells in the area have functioned satisfactorily, yet others have not.
3. The impact of the proposed wells on other existing wells in the area.

It is additionally specifically requested that the testimony be reviewed again regarding Dr. Welhan and Sherl Chapman and transcripts be made available and reviewed regarding those issues.

DATED this 22nd day of August, 1997.

F. Randall Kline
F. Randall Kline

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of August, 1997, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, Idaho 83402

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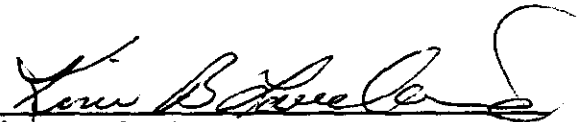
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Department of Water Resources
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Fax: (208) 327-7866.

 X U.S. Mail
 Express Mail
 Hand Delivery
 X Fax

Gary Spackman, Hearing Officer
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705
Fax: (208) 334-2348

 X U.S. Mail
 Express Mail
 Hand Delivery
 X Fax



Licensed Attorney

08/22/97[d:\erik\97-1031.pei\request.iss]

The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

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AUG 25 1997

Department of Water Resources

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

August 22, 1997

Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

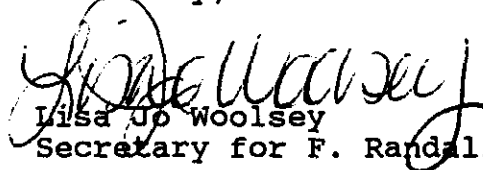
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Secretary for F. Randall Kline

FRK:ljw

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c: Harold Jones
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Karl J. Dreher, Director
Gary Spackman, Hearing Officer
Chris Pein

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Telephone: (208) 232-9007

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JUL 28 1997

Department of Water Resources

Attorney for Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 29-08175, 29-)
08176, 29-08177, 28-08178, 29-) PETITION FOR RECONSIDERATION
08179, 29-08180, 29-08181, 29-)
08182, 29-08183, 29-08194 IN)
THE NAME OF GIBSON JACK JOINT)
VENTURE a/k/a WILDHORSE RIDGE)
SUBDIVISION.)

COMES NOW the applicants, Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision, and hereby give notice and requests
that there be a reconsideration of the final order dated July 11,
1997, issued by Karl J. Dreher, Director.

1. This Petition for Reconsideration is timely, in as
much as it is filed within fourteen (14) days of the service of the
Order. A specific exception is taken to the determination that
there is insufficient water for the proposed use. The proposed use
sought to limit use of the water for culinary use and for
approximately one-half acre of lands immediately adjacent to a
residential dwelling. The same would be enforced through the terms
of restrictive covenants, deed and plat restrictions. The Proposed
Order limited water usage to in-home culinary use and stock water.
The provisions to allow stock watering as defined under Idaho law
would be more than sufficient to accommodate the watering of
approximately one-acre of shrubbery and lawn. The assertion that
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home owners may not be appraised of the water restrictions apparently suggests that the agency does not understand deed restrictions, restrictive covenants for plat limitations placed facially on the plat.

2. Further, discussion with regard to prior court decisions seem not to be relevant. The initial proposal called for much higher density of development and irrigation of the entire 119 acres. This is not the case nor has it ever been the proposal of this applicant to do so.

3. In regard to "findings of fact #4", it should be noted that the approvals were appealed at the time of the hearing. However, under the current status, all approvals have been granted by the City of Pocatello and County of Bannock.

4. Also, factually, item #4 is not consistent with the record. It was not the applicant who decided one well for every three or four residents would be better, but was a suggestion made by the Department of Water Resources.

5. It should be further noted that at "findings of fact #12", Welhan testified that he believed there would be sufficient water to meet the needs of the proposed use as it was suggested. At no time did Welhan indicated that he did not think that there would be sufficient water to meet the proposed use together with the existing uses. Further, proper well spacing would not adversely affect prior wells.

6. In regard to "findings of fact #14", Sherl Chapman did, in fact, testify that he was familiar with the water levels in the area and he concluded that there was sufficient water for ten domestic wells, each with a production rate of between 25 and 35

gallons per minute and that those were sustainable. Although he concluded that the aquifer would not produce sufficient water for irrigation of the entire 119 acres within the proposed subdivision, that is not what this applicant is proposing and is, therefore, irrelevant.

7. In regard to "findings of fact #16", Richard Hollingsworth did not testify as to why his well had declined, what the problems of his well were, nor how it had been tested. Everett Diller said that he had some problems with his well, but, again, it is a shallow well and he did not indicate that his well had been tested or determined as to why its reduced productivity. Diller did testify, as stated in "findings of fact #18", that he has not experienced problems with his irrigation wells.

8. In regard to "findings of fact #25", it is disputed that the ground water supply in Gibson Jack would not be sufficient for proposed use and existing uses during drought or lower than average precipitation uses. Pocatello has recently completed an extended drought period and, at the conclusion of that drought, the test well indicated that there would be sufficient water. Other wells in the area did not experience the problems experienced by a few with their wells, and it is uncertain why those others experienced problems.

9. The applicants take exception to "findings of fact #26" in that there would be sufficient water in the area to meet the proposed use and the existing uses. With the proposed use including use of storage tanks, there would be sufficient water to provide in-house culinary use and provide for up to one-half acre immediately adjacent to the residences for an appropriate yard.

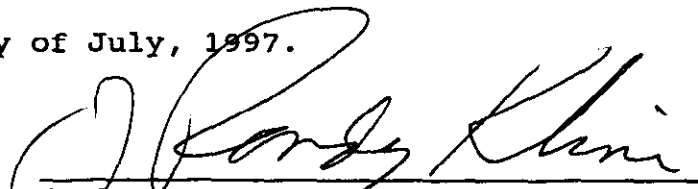
Although present water users may be experiencing in-house culinary problems, it is unknown whether that is because their wells are simply too shallow, whether their wells are plugged because of calcification or settling, or for whatever other reasons and virtually none had their wells inspected or tested to determine why there was a decrease in the productivity of their wells.

10. Both experts testified that there would be sufficient water to meet the proposed applicant's request and that it would not have a significant impact on adjacent wells. That fact remains undisputed in the record. The protestants offered no expert testimony.

11. Therefore, it is specifically requested that a finding be made that there is sufficient water to meet the proposed application and requested that the issuance of permits be granted.

12. It is also requested that a transcript of the hearing held on October 22, 1996 and continued on October 30, 1996, before the hearing officer Gary Spackman, be forwarded to F. Randall Kline, attorney for Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision.

DATED this 24th day of July, 1997.


F. RANDALL KLINE, Attorney for
Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of July, 1997, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, Idaho 83402

☒ U.S. Mail
☐ Express Mail
☐ Hand Delivery
☐ Fax

Richard Hollingsworth
9502 Gibson Jack
Pocatello, Idaho 83204

☒ U.S. Mail
☐ Express Mail
☐ Hand Delivery
☐ Fax

Clark Kelly
9685 Heather Rd.
Pocatello, Idaho 83204

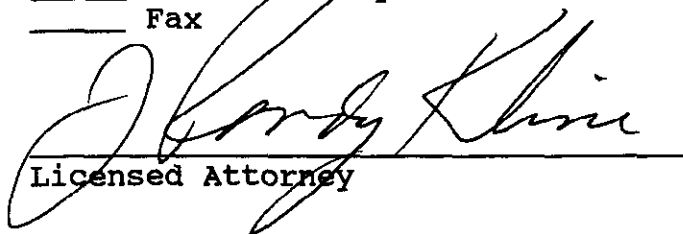
☒ U.S. Mail
☐ Express Mail
☐ Hand Delivery
☐ Fax

Everett Diller
2917 N. Stephanie Rd.
Pocatello, Idaho 83204

☒ U.S. Mail
☐ Express Mail
☐ Hand Delivery
☐ Fax

Karl J. Dreher, Director
Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

☒ U.S. Mail
☐ Express Mail
☐ Hand Delivery
☐ Fax



Licensed Attorney

07/24/97[d:\frk\97-1031.pel\reconsider.pet]

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PETITION FOR RECONSIDERATION

Page ^N



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

July 11, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER

RE: In the Matter of Application for Permit No. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 in the name of Gibson Jack Joint Venture, aka Wildhorse Ridge Subdivision

Dear Interested Party:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) 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 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.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

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(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department 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 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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 a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,



L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

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The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

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MAR 07 1997

Department of Water Resources

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MAR 10 1997

WATER RESOURCES
WESTERN REGION

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

March 3, 1997

Mr. Karl J. Dreher
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

FACSIMILE: (208) 327-7866

Re: Application for Permit Nos. 29-08175-29-08184 in the name
of Gibson Jack Joint Venture a/k/a Wildhorse Ridge
Subdivision

Dear Mr. Dreher:

Enclosed for filing please find the Objection to the Request
for Reconsideration regarding the above-referenced matter.

If you have any questions, please do not hesitate to contact
me.

Sincerely,

F. Randall Kline/ljw
F. Randall Kline

FRK:ljw

Encl

c: Harold Jones
Richard Hollingsworth
Clark Kelly
Everett Diller
Chris Pein

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MAR 07 1997

Department of Water Resources

F. Randall Kline, Esquire
F. RANDALL KLINE, CHARTERED
427 N. Main St., Suite L
P.O. Box 397
Pocatello, Idaho 83204-0397
Telephone: (208) 232-9007

Attorney for Gibson Jack Joint Venture

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR PERMIT NOS. 29-08175,)	
29-08176, 29-08177, 29-08178,)	OBJECTION TO THE REQUEST FOR
29-08179, 29-08180, 29-08181,)	RECONSIDERATION
29-08182, 29-08183, 29-08184)	
IN THE NAME OF GIBSON JACK)	
JOINT VENTURE, aka WILDHORSE)	
RIDGE SUBDIVISION.)	
_____)	

A request has been made by Richard M. Hollingsworth, requesting that the matter be remanded for further factual development of the record prior to issuing the final order.

The same is specifically objected to on the basis and for the reason that Mr. Hollingsworth is offering to present no additional or new testimony or additional evidence that he did not have readily available before, but is simply asking to rethink what has already been thought about and to represent what has already been presented.

Mr. Hollingsworth is continuing to assert that the matter should be connected to city water, yet that is not now nor has it ever been the issue before the Department of Water Resources. The evidence presented at the hearing was well addressed by Mr. Spackman in his determination.

It is further asserted that the request for reconsideration is simply another delay tactic on the part of Mr. Hollingsworth and a blatant attempt to increase costs and expenses for the applicants.

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Mr. Hollingsworth continues to assert that there is a judicial case which offers any presidential value at all. Apparently what Mr. Hollingsworth fails, refuses and neglects to acknowledge is that the prior case dealt with a vastly different proposed development than what is being proposed currently. The experts that were present and testified at the prior hearings indicated, in their professional opinions, that there was sufficient water to service the development as it is proposed.

The fact that Mr. Hollingsworth wishes to argue about and present the same evidence again that he presented previously, does not merit a request for reconsideration. As such, costs, attorney's fees and other appropriate sanctions should be levied against Mr. Hollingsworth, as his request is not well grounded and is simply a pretext for elevating the costs and creating additional delays.

There is absolutely nothing that is contained within Mr. Hollingsworth's request that could not have been argued at the last hearing or was in fact argued at the last hearing.

DATED this 3rd day of March, 1997.

For 
F. Randall Kline, Attorney for
Gibson Jack Joint Venture

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of March, 1997, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones
Department of Water Resources
900 North Skyline
Idaho Falls, Idaho 83402

 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax

Richard Hollingsworth
9502 Gibson Jack
Pocatello, Idaho 83204

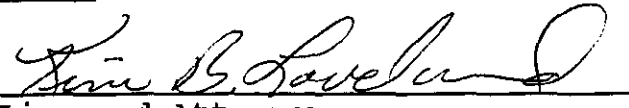
 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax

Clark Kelly
9685 Heather Road
Pocatello, Idaho 83204

 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax

Everett Diller
2917 N. Stephanie Road
Pocatello, Idaho 83204

 X U.S. Mail
 Express Mail
 Hand Delivery
 Fax



Licensed Attorney

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RICHARD M. HOLLINGSWORTH
9502 GIBSON JACK
POST OFFICE BOX #4
POCATELLO, IDAHO 83204-0004
1-208-234-2234

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FEB 25 1997

Department of Water Resources
Eastern District Office

MR. KARL J. DREHER
DIRECTOR - STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION
900 NORTH SKYLINE
IDAHO FALLS, IDAHO 83402

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FEB 28 1997

WATER RESOURCES
WESTERN REGION

February 21, 1997

RE: In the matter of Application for Permit Nos.
29-08175 through 29-08184 in the name of
Gibson Jack Joint Venture, aka Wildhorse Ridge
Subdivision.

Dear Mr. Dreher:

On the "recommended order" issued by the your department pursuant to Section 67-5243, Idaho Code, signed by Mr. Gary Spackman on the 4th of February 1997. There are provisions in this order which I want to file this petition for reconsideration before you issue a final order.

I am asking for a scheduled time for oral argument in this matter before issuing a final order. I do understand that this is at your discretion, and if authorized will be held in Boise, Idaho, at a set time and place by you.

I strongly feel that the State of Idaho, Department of Water Resources should remand this matter for further factual development of the record before issuing a final order.

On the Recommended Order, page #1, under "FINDINGS OF FACT", NO 1.

If a well is drilled, and the use of this well is to supply water for the service of domestic needs of up to four residential homes, and the well experiences the problems that the surrounding existing wells are having, and the recall is not there, and the well water level continues to drop, and the well is no longer capable of producing the demand of water supply needed for four homes, what alternatives will the home owners have then? "City Water hook up".

The application proposes to cumulatively supply water for 119 acres with 33 lots, using 10 wells. Right now there are domestic wells surrounding this subdivision which are having recall problems. Some residence had to redrill new wells because the original ones could not produce enough water for their

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domestic use.

On Page #2
NO 3.

There is a court order signed by District Judge Wallace M. Transtrum, case number #39322-C, for this same parcel of land, stating that no additional wells will be drilled, and that the water supply will come from the City of Pocatello. I strongly ask you to review the filed or records for confirmation. The present developers were awere of this my there own admittance, but yet denied its existence at the first meeting which was held with the City of Pocatello in its first stages of approval of the subdivision.

The Bannock County Commissioners did reject the proposal and this rejection was upheld by the District Court of the Sixth Judicial District Courts, in the 1980's. (This is the same land Mr. Dreher, that the present developer is using.)

Mr. Dreher, can your department override a court order, that runs with this existing land and allow the proposed wells against the court order ?

NO 5.

A quote:

"The applicant originally proposed one well and one septic tank for each residence. After initially analyzing the availability of water in the area, however, the applicant decided that one well for every three or four residences would reduce the chance of local well interference and would also force better maintenance by the owners." End of Quote.

This tells me, that they know the problem exist, and in my opinion have no concern for the families who will be buying there lots, and later not having the water there for home usage.

NO 6.

A quote:

"Each of the residential lots within the subdivision will be two to three acres in size. The applications propose one-half acre of irrigation per residential lot. The remainder of each lot will remain in natural vegetation." End of Quote.

Fire's, the developers are not even complying with state fire marshal guidelines, and can not meet with the required gallons of water needed for such protection. Unless something has changed since November 1996.

Who is going to control that the residents are going to comply with the irrigation of a half acre ? By law, who can stop them, if they don't ? Who is going to monitor it ? And if the

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restrictions are broken, who can act on it ?

The developers, I think not, they will have there money and be done with it. The problem will fall on the new land owners, and the existing surrounding residence.

Mr. Dreher, if a single well, supplying water to four residents, cannot supply the needed water. Can those residents, who are now land owners, sink there own individual well, and pull off the community well ? The 38 lots will turn into 38 wells ? Can this happen ? Resulting in the final outcome of the water being gone to those who live on top of Gibson Jack. We will have to hook into City Water, and each residence being responsible for the cost to do so, because the water will be depleted ? While the developers walk away from it ?

City water is there, for their hook up. Lets do it right, and have the city water brought in as the court order has spelled out. Then the water will be there for all user's, and their needs, including fire protection.

NO 8.

I was given the understanding that Mr. Welham was not paid. The testing they did was not proper nor did it prove that sufficient water is there. They pumped water Mr. Dreher for 2 1/2 days straight, one day after the other, they pumped for approx. 6-7 hours on the first day, 5-6 hours on the second day, then approx. 4 hours on the last day.

The recall in this area is slow to act, the month in the year they did this was when the water should of been high to my understanding. How could this sort of testing really show the effects of water supply or the effect of it. I say this due to your own departments knowledge when I asked for help or guidance in 1984, and I quote:

"THE TIME OF MAXIMUM WATER RECHARGE AND MAXIMUM WATER DRAWDOWN WILL LAG THE TIME OF SURFACE WATER RECHARGE BY A TIME PERIOD DEPENDENT UPON THE DEPTH, POROSITY OR PERMEABILITY AND SLOPE OR GRADIENT. IN ORDER TO DETERMINE THE TREND OF GROUNDWATER RISE OR DECLINE,

DATA SHOULD BE COLLECTED FOR A LONG ENOUGH TIME PERIOD TO SHOW THE SEASONAL FLUCTUATIONS AND THE ANNUAL CHANGES IN BOTH THE PEAKS AND MINIMUM LEVELS ASSOCIATED WITH NON-STATIC GROUNDWATER LEVELS.

THE WATER LEVEL OF A CONFINED AQUIFER IS DEPENDENT UPON THE RECHARGE MINUS THE WITHDRAWALS FROM THAT SYSTEM."

This was a document from Lyle Swank, PE, the Assistant Watermaster, dated May 18, 1984.

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Again, they pump water for three days straight Mr. Dreher, and say there is water. When we, the residents who have lived here for 8 to 20 years plus have testified of our water problems. As if our comments mean nothing, and that our actual experiences hold no merit. I have asked for such a study as Mr. Swank stated, to put my mind at peace as well as the surrounding residents, that the water will sustain the additional wells, and not effect my water, nor my neighbors. But it seems to go unheard.

Mr. Welhan's report, is a report taken from the existing wells that were drilled near this subdivision. He makes charts and graphs from our well logs, and says, plenty of water. Well logs that are 20 years plus old, representing conditions in the 1970's, not the present situation. Most of the well logs are estimates, I have heard this from even individuals in your own department. Out puts are not accurate, they are estimates in most cases. In my opinion, Mr. Welhan's report is not proper nor valid, due do the means inwhich he got his information, well logs from our wells, data that does not show the problem as it is now.

On Page #3
NO 9.

My comment on this Mr. Dreher, is simply this, it was reported to the Bannock County Planning and Zoning that the final output was 20 gallons per minute. Not 38 gallons per minute.

NO 13.

District Judge Wallace M. Transtrum, on the 18th of November, 1987, in his MEMORANDUM DECISION AND ORDER, case No #39322-C, stated in the second paragraph, and I quote:

....."In September 1984, the Bannock County Commissioners (Board) approved a conceptual subdivision plan filed by plaintiffs/petitioners (developers) on the condition that the subdivision would be connected to the Pocatello Municipal Water System" end of Quote.

Then in the fifth paragraph, of this same document, and I quote:

....."According to petitioner's (Mr. Bob Tripp d/b/a Gibson Jack, 1st Addition) own expert, Mr. Chapman, the ground water supply is inadequate to meet the requirements that had been established by the board. The finding by the Board that domestic wells will not be capable of producing sufficient water to supply the lots is reasonable is supported by substantial evidence and will not be disturbed on appeal"..... end of Quote.

On Page #4.
NO 24.

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"The testimony of both the experts retained by the applicant and the protestants' witnesses established that there is water available for appropriation during normal-to-high precipitation years, at least during the early part of the summer. Testimony established that during periods of drought or lower than average precipitations, the limited ground water supply in the Gibson Jack drainage may not supply sufficient water for both the proposed use and existing uses."

Mr. Dreher, our area has more drought years than the other. Records are available for this as fact. I submitted documentation on this matter, showing the years of drought, one after the other.

On Page #5.
NO 26.

I disagree with this statement, completely.

Illustration:

It takes approx. 5 gallons to flush a toilet, 38 Lots, and since most homes being built now, are two bathroom residence and a two more occupants in each residence. The toilets get flushed, lets go low, and say 4 times a day in each house hold.

5 gallons per flush X four flush's = 20 gallons of water a day

20 gallons of water a day X 38 residents = 760 gallons of water a day.

760 gallons of water a day X 7 days = 5,320 gallons of water a week

5,320 gallons of water a week X 52 weeks = 276,640 gallons of water per year.

Then add in showers, dishwashers, drinking water, clothwashers, bathtubs, and watering a lawn. Millions of gallons of water, taken from the underground off 119 acres of land.

To my memory, your department has a form, titled "Notice of Claim to a Water Right" acquired under state law for domestic and or stock water purposes. For daily use is less than 13,000 gallons per day. If this is a average for one residential home use, that is allot of water for people who don't understand the problems in an area where water is declining.

13,000 gallons of water a day X 7 days = 91,000 gallons of water a week per resident.

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91,000 gallons of water a week X 38 residents = 3,458,000
gallons of
water per
week

3,458,000 gallons of water a week X 52 weeks = 179,816,000
gallons of
water a year

And this does not include those of us who are presently
using the ground water supply.

The City of Pocatello has put two new large wells in the
area, one of which is at the end of Gibson Jack Creek Road, to
the South East. Comments from the City of Pocatello, it will
supply new water demands.

Now look at the reports reflecting all the drought years we
have had, replenishing the water supply is not there. That is
why our existing wells have dropped from our usage.

There is not sufficient water, and to increase the millions
of gallons of water on our current water table per year, is not
right.

Mr. Dreher, I feel that I have tried to ask for conformation
to ease my mind, that the existing water table will supply the
water needed for this proposed subdivision, as Mr. Swank stated.
Especially when the existing users are having water problems,
slow recall, water dropage, and having to put new wells in.

If these additional wells are allowed, and if my residence is
affected by it, I have every intention of filing a law suite
against the developers, as well as your department. For I feel
that I have gone out of my way, to ask my neighbors to testify of
our water problems, and to show your department that studies are
not proper, nor is the water supply sufficient for the additional
burden that might be put on it.

I also feel, that this will not be monitored at all, but
just over looked. I fore see Neighbor against Neighbor in water
usage if this goes through with the well idea.

The locations of the proposed wells are given on Page #7.
What if, they sink a well, and it doesn't give the water needed
to supply water for four residence. Will they be allowed to keep
sinking a well in that general area, until they hit the volume
they attempt to get? Will the first well be used, since it has
been drilled.

I have tried to locate existing laws to bring to your
attention. But I feel you should al-ready be familiar with past
situations and rulings of law, being the Director for the State
of Idaho, Water Resource's.

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I have quoted a case law which stands, on this same land already, with the Sixth Judicial District Court.

Other case's before the Department of Water resources of the State of Idaho, in 1991 in the matter of applications for permits nos 13-7427 in the name of Von N. Simonson, 13-7451 in the name of Richard or Ila Holsten, 13-7458 in the name of Dwain K. Christensen, 29-7505 in the name of M & M Central Dairy, 29-7636 and 29-7637 in the name of Don C. Rigby, 29-7618 in the name of Golden Grain Farms, and 29-7608 in the name of Terry Rindlisbaker.

I went to the County Law Library, and have found remarks which I feel are similar to my petition.

(Utah 1969) Wayman vs Murray City Corp., 458 P 2d 861, 23 Utah 2d 97.

(Or. App. 1973) Vandehey vs Wheeler, 507 P.2d 831, 13 Or. App. 25.

(Colo. 1974) Kuiper vs Lundvall

(Colo. 1968) Felhauer vs People

(Colo. 1963) Whitten vs Coit

(Idaho 1977) Nettleton vs Higginson

(Idaho 1973) DeRousse vs Higginson

(N. M. 1964) Reynolds vs Wiggins

(Okla. App. 1974) City of Stillwater vs Oklahoma Water Resources Bd.

(Idaho 1976) Briggs vs Golden Valley Land & Cattle Co.

Dated this 21 of February 1997.


RICHARD M. HOLLINGSWORTH
9502 GIBSON PARK
POST OFFICE BOX #4
POCATELLO, IDAHO 83204-0004

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MAY 07 1998

I do hereby certify that on this 21 day of February, 1997,
I mailed a true and correct copy, postage prepaid, of the
foregoing Petition, Exceptions and Briefs to the following:

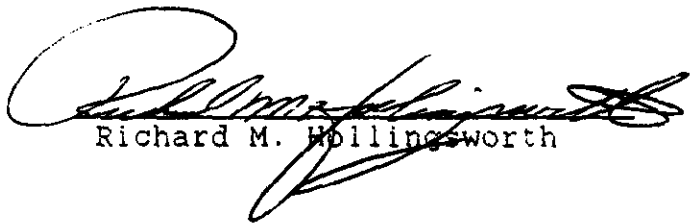
F. Randall Cline
Post Office Box 397
427 Main, Suite L
Pocatello, Idaho 83204

Harold Jones
Department of Water Resources
Eastern Region
900 North Skyline
Idaho Falls, Idaho 83402

Clark Kelly
9685 Heather Road
Pocatello, Idaho 83204

Everett Diller
2917 North Stephanie Road
Pocatello, Idaho 83204

State of Idaho
Department of Water Resources
1301 North Orchard Street
Statehouse Mail,
Boise, Idaho 83720-9000



Richard M. Hollingsworth

MICROFILMED
MAY 07 1998

RECEIVED

FEB 24 1997

Department of Water Resources

State of Idaho
Dept. of Water Resources
Attn: Karl Dreher, Director
1301 North Orchard St.
Statehouse Mail
Boise, Idaho 83720-7866

February 20, 1997

Recommended Order

RE: Permits # 29-08175 through and including 29-08184 listed in the name of Gibson Jack joint venture, AKA Wildhorse Ridge Subdivision.

Dear Sirs,

Here are a few items you should consider before issuing your final orders on the above mentioned subdivision. The following items of the recommended order show incorrect statements.

Item # 9-10 on page 3 - the test well was tested in January 1996, which is the recharge cycle for that aquifer. Therefor, this well test does not give an accurate quantity of water that would be available during peak times of water usage from the aquifer.

Item # 11-12 on page 3 - the wells that are already in place and being used by the present water users may be adequate at the present time but, the question we have is why we should be required to deepen our active wells so that someone new can come in and deplete our water resources. The Professional Geologist was uncertain about the existence, or capacity of a deeper aquifer. The 25 to 35 gallons per minute production rate is inadequate for a 3 or 4 person family community well system.

Item # 18 on page 4 - Mr. Oliver testified that he had to drill a new well, not re-drilled his well, so the information in item #18 is completely in accurate.

Item # 19, 20, 21, 22, 23, & 24 on page 4 - all of the present property owners with water rights have experienced water shortages in previous years. As per item #24, according to the testimony of both the expert witnesses and the Protestants, there is water available during the early part of summer, but in years of lower than average precipitation there is limited ground water supply. That limited supply forces the current water right holders to let their properties dry up, or burn because of a lack of water, which deprives them of their legal water rights.

Items covered by the Conclusions of Law on pages 5 & 6 - Who will be responsible for monitoring and enforcing the rights of the present water right holders? Who will monitor and control the locations and number of wells as prescribed on page 7? The subdivision is to be completed in phases therefore, I recommend the wells and water rights be administered according to the development as outlined in the plat.

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In conclusion, as an existing water rights owner I hope you will take into consideration the discrepancies I have outlined above. To me these items are indicators of what could be expected in the future relative to the developer of this subdivision. It is not my intent to infringe on other peoples rights, but to protect my own. Thank You in advance for your consideration on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Everett & Fran Diller". The signature is fluid and cursive, with the first name "Everett" being more prominent than the second name "Fran".

**Everett & Fran Diller
2917 N. Stephanie Rd.
Pocatello ID 83204-7241**

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9. The Iverson well was tested on January 11, 1996. It pumped between 20 and 38 gallons per minute. A recording device was placed in a well owned by Chad Nelson. The Nelson well is located approximately one-quarter mile away from the Iverson well.

10. Based on the well test, Welhan estimated the aquifer's water holding capacity, its transmissivity, and the possibility of interference with other wells. He concluded that there would be very little local interference caused by the proposed wells. He also concluded that most of the ground water is diverted from storage that recharges annually to an aquifer of limited capacity. He concluded that pumping during the irrigation season decreases the ground water level in the aquifer, but precipitation during the non-irrigation months recharges the aquifer and refills the aquifer to the approximate level of the previous year.

11. Welhan stated that the storage in the aquifer might not be sufficient to satisfy all the uses if there are extended droughts or if a large number of water users divert additional water from the aquifer. Welhan testified that the local aquifer in the mouth of the Gibson Jack Creek drainage will sustain the withdrawals from existing wells and also the additional ten wells proposed by these applications during normal to high precipitation years. Welhan stated that wells east and north of the proposed subdivision could experience problems during low recharge years.

12. Welhan's report speculates that there may be a shallow and a deep aquifer, and that some of the water users presently pumping from the shallow aquifer might be able to pump from the deeper aquifer if they deepened their wells. Welhan was uncertain about the existence or capacity of the deeper aquifer, however.

13. Sherl Chapman, a geologist representing the applicant, testified that he is familiar with water levels in the area, and that he had also derived some aquifer values based on tests he had conducted. He concluded that there was sufficient water for domestic wells with a production rate of between 25 and 35 gallons per minute. He concluded that the aquifer would not produce sufficient water for irrigation of all the lands within the proposed subdivision.

14. Several owners of residential or agricultural properties surrounding the proposed place of use testified regarding declining ground water levels in existing wells. The location of most of the wells are depicted on Figure 1 of applicant's exhibit no. 4.

15. Richard Hollingsworth testified his domestic well water levels have declined 63 feet from the first measurement in July 1978 to a measurement in July 1993. He testified that he cannot irrigate his one-half acre of lawn during the summer. He also testified that sometimes there is insufficient water to flush a toilet during the summer.

16. Everett Diller (Diller) stated that he had lived in the Gibson Jack Creek area since 1978. He testified the water supply was good until a few years ago. He testified he can only irrigate a 7200 square feet front lawn in the summer with his domestic well.

17. Diller also owns an irrigation well that irrigates approximately four acres. Diller hasn't experienced any pumping problems with his irrigation well. The irrigation well is 265 feet deep, approximately 100 feet deeper than the domestic well.

18. Michael Oliver (Oliver) testified that a domestic well was drilled on his property in 1991 to a depth of 180 feet. During 1994, the well was pumping air, and Oliver redrilled his well in December 1994 to a depth of 300 feet. Oliver did not testify that he experienced any water shortages after redrilling his domestic well. Oliver irrigates a 5,000 square foot lawn.

19. Harvey Pickens (Pickens) owns both a domestic well and an irrigation well located south of the proposed place of use. Both the wells are approximately 300 feet deep.

20. Pickens' domestic well was drilled in 1969. Pickens purchased the property in 1972. During the first few years, Pickens' domestic well produced sufficient water. During the last six to eight years, however, the domestic well has not produced sufficient water for domestic use.

21. Pickens' irrigation well was drilled in 1992. In the spring of 1996, Pickens could only pump for four hours. In the fall of 1996, he could only pump for 30 minutes.

22. Mary Harling (Harling) owns a well that is 115 feet deep. When her domestic well was drilled in 1978, the water level was within 50 feet of the land surface. Since 1978, Harling has lowered her pump 20 feet, and in 1996, began experiencing problems again. During late 1996, Harling could not run a clothes washer and a dish washer at the same time because her pump would not produce enough water.

23. Michael Nix testified his well was drilled in 1986 to a depth of 260 feet. Larry Bybee testified he owns a domestic well drilled to a depth of 180 feet. Both testified about declines in ground water levels and difficulty in diverting sufficient water.

24. The testimony of both the experts retained by the applicant and the protestants' witnesses established that there is water available for appropriation during normal-to-high precipitation years, at least during the early part of the summer. Testimony established that during periods of drought or lower than average precipitation, the limited ground water supply in the Gibson Jack drainage may not supply sufficient water for both the proposed use and existing uses.

25. During periods of low precipitation, the domestic uses proposed will remove water from the system that should be delivered to earlier-in-time water right holders.

26. Diversion of water by a new domestic water user for in-house culinary use will not significantly reduce water supplies available to holders of earlier in time water rights, because the use is essentially non-consumptive.

27. The protestants stipulated that the applicant has sufficient financial resources to develop the project and that the applications are not proposed for purposes of speculation or delay.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A provides, in pertinent part, as follows:

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 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, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor

2. The applicant bears the burden of proof regarding the criteria set forth in Idaho Code § 42-203A.

3. Domestic water users are intolerant of deficiencies in water supply. Most domestic water users expect to be able to irrigate some greenery associated with their homes. Domestic water users have an almost absolute expectation that there is sufficient water for in-house culinary use; water to drink, to shower with, to wash clothing, or to flush a toilet.

4. These absolute expectations are held by individuals who may buy lots from the applicant, by the protestants, and by other water users. Present water users are already experiencing in-house culinary water delivery problems and difficulty in irrigating greenery associated with their homes.

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5. Future lot owners should not be mislead into believing that an approval of a water right permit will satisfy their absolute expectation of delivery of domestic water on demand. At times, there will not be sufficient water to satisfy their expectations and the expectations of domestic and irrigation users with earlier uses and earlier priority water rights. Total fulfillment of the expectations of the applicant's successors would injure earlier in time water uses.

6. There is sufficient water for strict, limited, in-house culinary use and water consumption for stock associated with future homes that will be built in the proposed development.

7. According to the testimony, there is insufficient water for irrigation of any land in the proposed place of use.

8. The applicant has sufficient financial resources to develop the proposed project.

9. The applicants are not seeking a permit for speculation or delay.

10. The use proposed by the applications is in the public interest, except where injury or insufficiency of the water supply relates to the public interest.

11. The use proposed by the applications is consistent with principles of conservation of the water of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-8183, and 29-08184 are **PARTIALLY APPROVED** to allow diversion for domestic purposes for in-house culinary use and direct water consumption by stock associated with a domestic dwelling only.

IT IS FURTHER ORDERED that the permits are conditioned as follows:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before the date in the Final Order.

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. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

5. A well drilled pursuant to this permit must be located at least 500 feet from any existing well. Well spacing closer than 500 feet must be approved by the Department of Water Resources.

IT IS FURTHER ORDERED that points of diversion and places of use within Wildhorse Ridge Subdivision are further defined as:

1. Well #1 is located between Lots 1 & 2, and serves Lots 1, 2, 19, and 20 under Permit No. 29-08175.

2. Well #2 is located between Lots 3 & 17, and serves Lots 3, 4, 17, and 18 under Permit No. 29-08176.

3. Well #3 is located at the common corner of Lots 5, 6, 13, and 14, and serves Lots 5, 6, 13, and 14 under Permit No. 29-08177.

4. Well #4 is located within Lot 9, and serves Lots 7, 8, and 9 under Permit No. 29-08178.

5. Well #5 is located between Lots 11 & 12, and serves Lots 10, 11, 12, and 15 under Permit No. 29-08179.

6. Well #6 is located between Lots 16 & 24, and serves Lots 16, 24, and 25 under Permit No. 29-08180.

7. Well #7 is located between Lots 23 & 37 and serves Lots 21, 22, 23, and 37 under Permit No. 29-08181.

8. Well #8 is located between Lots 33 & 34, and serves Lots 33, 34, 35, and 36 under Permit No. 29-08182.

9. Well #9 is located between Lots 30 & 31, and serves Lots 29, 30, 31, and 32 under Permit No. 29-08183.

10. Well #10 is located between Lots 26 & 27, and serves Lots 26, 27, and 28 under Permit No. 29-08184.

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

February 5, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the matter of Application for Permit Nos. 29-08175 through 29-08184 in the name of Gibson Jack Joint Venture, aka Wildhorse Ridge Subdivision

Dear Interested Party:

The accompanying order is a "**recommended order**" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. 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 twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, 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.

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CERTIFICATE OF SERVICE

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

FINAL ORDER

The Director 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 agency 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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Glen Saxton", written in a cursive style.

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

C: IDWR - Region

The Law Offices of

F. Randall Kline, Chartered
A Professional Corporation

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

October 1, 1996

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Department of Water Resources
Eastern Region

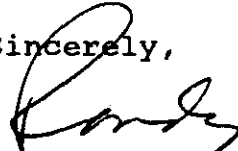
Harold Jones
Water Rights Supervisor
Idaho Dept. of Water Resources
900 North Skyline Drive
Idaho Falls, Idaho 83402-1718

Re: Gibson Jack Joint Venture
Application Permit Nos. 29-01875 thru 29-08184

Dear Mr. Jones:

Please note and be advised that we have not received verification of the hearing date regarding the appeal from Gary Spackman, which is tentatively scheduled for October 22, 1996. Please advise.

Sincerely,



F. Randall Kline

FRK:ljw

c: Chris Pein

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MAY 07 1998

The Law Offices of

F. Randall Kline, Chartered
A Professional Corporation

September 17, 1996

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

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SEP 18 1996

Department of Water Resources
Eastern Region

Harold Jones
Water Rights Supervisor
Idaho Dept. of Water Resources
900 North Skyline Drive
Idaho Falls, Idaho 83402-1718

Re: Permit Nos. 29-01875 thru 29-08184
Applicant: Gibson Jack Joint Venture
Objectors/Intervenors:
Richard Hollingsworth (August 10, 1996)
Clark Kelly (August 17, 1996)
Everett D. Diller (August 12, 1996)

Dear Mr. Jones:

This is a response to the objections filed by Richard M. Hollingsworth, Clark Kelly and Everett D. Diller on behalf of Gibson Jack Joint Venture.

1. Will the proposed use reduce the quantity of water under existing water rights?

Response: Pursuant to the engineered studies done, the quantity of water will not be reduced.

2. Is the proposed water supply insufficient for the purpose intended?

Response: With the restriction of watering not more than one-half an acre of property for the culinary use of the well, there should be adequate water available as determined by the engineered studies.

3. Is the application made in good faith or for delay or speculative purposes?

Response: The application is made consistent with the application for subdivision development.

4. Has the applicant sufficient financial resources with which to complete the project?

Response: The applicant has sufficient financial resources to fully complete the project.

NOT RECORDED
MAY 07 1998

September 17, 1996

Page 2

5. Will the proposed use conflict with the local public interest?

Response: The proposed use will not conflict with the local public interest and will simply utilize the water resource that is available in the area.

6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

Response: The applicant submits that the proposed use is in harmony with conservation of water resources within the State of Idaho.

In further response, Mr. Hollingsworth makes reference to a Memorandum Decision and Order, Case No. 39322-C, which provides no benefit or authority in these proceedings. The facts and information presented in that case were not as well engineered or tested as they have been with regard to the information presented to the Bannock County Land Development Board.

Additionally, the ultimate finding of Judge Transtrum supported the findings of the Bannock County Land Development Board. In this case, both the Bannock County Land Development and the County Commissioners have made a determination which supports the approval and the development of the Wildhorse Ridge Subdivision a/k/a Gibson Jack Joint Venture. Therefore, the reliance upon Judge Transtrum's decision is of no precedential value. The applicants intend to present evidence which refute the claims made by Hollingsworth.

Regarding the protest by intervenor, Clark Kelly, Mr. Kelly suggests that the development connect to city water. However, he fails to mention that city water is presently not available in the area. Further, he fails to cite any specific evidence which indicates that this development will, in fact, impact on his water. Unfortunately, some people feel that you can drill a well and not approve it for twenty years and it continues to function the same as the date it was drilled. However, that does not comport with the reality of wells. Additionally, his well may not be into the depths of the best water sources.

With regard to the protest filed by Everett D. Diller and his request to intervene, Mr. Diller has made no showing that there will, in fact, be an impact on his well by reducing the quantity of the water, nor has he made a showing as to any of the six items to be considered, other than his well is not pumping as effectively as it once did.

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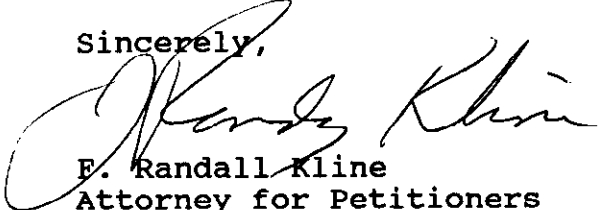
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September 17, 1996

Page 3

Wherefore, it is requested that (1) the objections be dismissed and held for naught, (2) appropriate permits be granted to the petitioners, (3) costs and fees be awarded pursuant to regulations, and (4) such further relief as deemed appropriate under the circumstances.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Randall Kline".

E. Randall Kline
Attorney for Petitioners
Gibson Jack Joint Venture

FRK:ljw

c: Chris Pein
Richard Hollingsworth
Clark Kelly
Everett D. Diller

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MAY 07 1998

→ Petition to intervene

Receipt # E022588

FROM: Mr. Everett D. Diller
2917 North Stephanie Road
Pocatello, Idaho 83204
1-208-234-2202

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SEP 12 1996

Department of Water Resources
Eastern Region

TO: Mr. Harold W. Jones
Water Rights Supervisor
Idaho Department Of Water Resources
900 North Skyline Drive
Idaho Falls, Idaho 83402-1718

Re: Gibson Jack Joint Venture
Application for permit # 29-08175 thru 29-08184

12 August 1996

Dear Mr. Jones:

In reference to the issues of domestic well permits to the Gibson Jack Joint Venture, I wish to protest against the approval due to the water quantity available to the residents already established in the near vicinity of the development.

I have two wells, one for domestic use which was drilled in 1978. The well was drilled at 165 feet, with a static water level of 65 feet, putting out 30 gallons per minute with a pumping level of 100 feet. When first drilled, I had enough water to irrigate my lawn and pasture, now I can only run four or five small sprinklers on the lawn at one time. But when my family members wish to take a bath, we have to turn off the sprinklers because the pump will start breaking suction for lack of water.

A few years later I drilled a second well for the purpose of irrigation, but I will eventually have to connect to the house water system, which I feel will occur if more wells are drilled in the near vicinity. Because my first well, the domestic well, is breaking suction all-ready as I have indicated.

Being that the sub division (Wild Horse Ridge Subdivision) is in the Pocatello City impact area. There's no reason for them not to connect to city water systems and let the established home owners continue to use what under ground water resources they now have available for their home usage.

My water rights are #29-7766 and P 29- 07905. I feel that my rights are being violated by the issuances of any new wells in or near my residence, which is 2917 North Stephanie Road, (Bannock County), Pocatello, Idaho 83204. What guarantee do I have that my water will still be there if additional wells are drilled behind my property? Where I am experiencing problems now with the underground water.

I would like to know from your agency, what my water rights are legally. If you were to allow additional wells behind my

MAY 07 1998

residence, causing my wells to go dry, or prevent the usage of my present water availability. Does the First Come really hold as I was lead to believe from the Department of Water Resources when my permits were given and established ?

I would appreciate any response to this matter, and to my concerns which you might be able to render. Please inform me of any future meetings with your department, so that I may attend.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Everett D. Diller".

Everett D. Diller

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MAY 07 1998

Richard M. Hollingsworth
9502 Gibson Jack
Post Office Box #4
Pocatello, Idaho 83204-0004
1-208-234-2234

August 10th, 1996
Saturday

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AUG 14 1996

Department of Water Resources
Eastern Region

Reference: Gibson Jack Joint Venture (aka)
Wild Horse Ridge Subdivision

Dear Mr. Karl J. Dreher,
(Director of the Department of Water
Resources, for the State of Idaho)

The City of Pocatello's newspaper, named "The Idaho State Journal", in the (F6) Thursday, August 8, 1996 issue, in the "Legals" section, there is several adds requesting "Ground Water" (Domestic) permits, I need to strongly protest them, as indicated by the ad; "Protest must be filed with the applicant and Director, Dept. of Water Resources,...". These were brought to my attention, by my neighbor Mr. Everett Diller. (copy attached, marked as #2). I have also mailed a copy of this to the applicant by certified mail.

I protest the following, as shown in the "Idaho State Journal Newspaper" and in the same order as they appeared in the Legals section, (Copy attached, marked as #1): 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184, 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, and 29-08184. (It appears they repeated themselves. Why ??) Is it due to the filing dates, and if so, why two separate filing dates, or are they met to be the same ??

If any other permits have been filed, with reference to the "Wild Horse Ridge Subdivision", or aka "Gibson Jack Joint Venture", that the "Idaho State Journal" did not reflect, I wish to be notified, so I may be able to file a protest on them or ask you to include them if possible and I need to inform the court.

The residence which live surrounding this subdivision need to be informed, so that they may show and express there views as I am now.

District Judge Wallace M. Transtrum, on the 18th of November, 1987, in his MEMORANDUM DECISION AND ORDER, Case No #39322-C, stated in the second paragraph, and I quote:

....."In September 1984, the Bannock County Commissioners (Board) approved a conceptual subdivision plan filed by plaintiffs/petitioners (Developers) on the condition that the subdivision would be connected to the Pocatello Municipal Water

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Amf
Page #1 of 4

System".....end of quote. (A complete copy of this signed document is attached to this protest for your review, marked as #3).

Also in the fifth paragraph, of same document, and I quote:

..... "According to petitioner's (Mr. Bob Tripp d/b/a Gibson Jack, 1st Addition) own expert, Mr. Chapman, the ground water supply is inadequate to meet the requirements that had been established by the Board. The finding by the Board that domestic wells will not be capable of producing sufficient water to supply the lots is reasonable is supported by substantial evidence and will not be disturbed on appeal."..... end of quote.

Also attached (marked as #3), is a Final Order of the court dated on 14 September, 1988. Where I quote the last paragraph as follows;

....."IT IS THEREFORE ORDERED that this court's Memorandum Decision and Order of November 18, 1987, is affirmed as the final order of this court and this cause"..... end of quote.

The appeal filed on April 30th, 1996, addressed to the Bannock County Commissioners, with reference to the Wild Horse Ridge Subdivision aka Gibson Jack Joint Venture, is attached and marked as #4.

In the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock, case no# 39322-C, where the Plaintiffs are BOB TRIPP, ROBERT THOMPSON, d/b/a GIBSON JACK, 1ST ADDITION, VS BANNOCK COUNTY COMMISSIONERS, this is the same property as the Wild Horse Ridge Subdivision aka Gibson Jack Joint Venture !!

Around the 15th of June, 1994, Mr. Bob G. Tripp & Mrs. La Rae Tripp, sold the property to Mr. Guy Anderst, Mr. W. Chris Pein, and Mr. Thomas Iverson. (Attached & Marked as #5), Documents indicated as Exhibit "A" 94011108, and Warranty Deed 94011108.

Attached and marked as #6, titled as Schedule B, Order No 18682-B, Policy No. J 259391, P4, number #6, I quote, ... "REAL ESTATE MORTGAGE dated June 15, 1994 to secure an indebtedness in the principal sum of \$169,000.00, and any other amounts and/or obligations secured thereby.

Recorded: June 16, 1994, Instrument No. 94011109

Mortgagor: W. CHRIS PEIN, a married man dealing with his sole and separate property and GUY ANDERST, a married man dealing with his sole and separate property, and THOMAS IVERSON, an unmarried person.

Mortgagee: BOB G. TRIPP and LA RAE TRIPP, husband and wife."..... end of quote.

I have this matter presently before the District Court of

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MAY 07 1998

Page #2 of #4

the Sixth Judicial District of the State of Idaho, In and For the County of Bannock, case no #CV OC 96-01023, filed in July of 1996. Notice of Appeal For Judicial Review, and Petition For Review of Administrative Proceedings, Plaintiff: Richard M. Hollingsworth vs Defendants: Bannock County Commissioners, Carolyn Meline, J. O. Contant, Tom Katsilometes. In reference to the Wild Horse Ridge Sub. aka Gibson Jack Joint Venture. Which is attached and marked as #7.

Mr. Chris Pine, Mr. Guy Anderst, and Mr. Tom Iverson had a well drilled behind by residence a few hundred feet West of my property. This well was drilled by Cushman Drilling in Blackfoot, Idaho. After the well was completed, Mr. Pine brought in a portable pump and pumped water out for 4 to 7 hours periods each day for two / three days straight. Then Mr. Pine and Mr. Anderst testified that there was enough water, because the single well was supposedly pumping 20 gallons per minute (to my memory). Which they indicated was going to supply water for three or four residents. I was told by the drillers it was being drilled for the future residence of Mr. Thomas Iverson.

A few months later, Cushman Drilling came back up and drilled the same well deeper, another 160 feet, (the well depth I believe is 460 feet now), and they are not getting or hitting any additional water at all. They went through clay, and then hit boulders, the water at the 1st level they hit, is probably seeping out down to a lower depth from there efforts of going deeper, what a waste. The well's walls were collapsing in, so it is now caped and dead. The well permit was in the name of Mr. Thomas Iverson.

It would be wrong to allow additional wells in this area, and also to allow the number of septic drain fields over the water table in such a small area.

I have not spoken with my neighbors for permission to include them in this document, but I strongly ask for an audience if necessary with you, in allowing myself and by neighbors to tell you of our problems with reference to water and concerns of sewage drainage, where our county has already experience problems in a near by area, and yet showed no concern for this area.

Since the Court Order by the District Judge, our wells have dropped in water levels, some as much as 75 feet. Mrs. Harding stated to me, that there well since they drilled it, has dropped 50 feet. Presently, my well has started pumping air, if I have more than three sprinklers running. My lawn is dry, and brown looking, it crunches under your feet when walked upon, and on some of my trees, the leafs are turning yellow from lack of water.

I thank you in advance, for your attention in this matter, and appreciate any guidance or assistance you can render. If you require any additional information, or copies of documents with

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MAY 07 1998

Handwritten signature
page #3 of 4

reference to this matter, please let me know, and I will make every attempt in getting them to you.

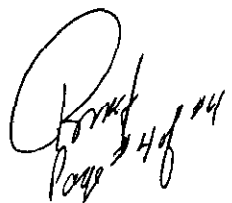
Would you please let me know what procedure will follow after you have received this protest, so that I will know what is expected of me. My filing fee is attached.

Sincerely,



Richard M. Hollingsworth
Post Office Box #4
9502 Gibson Jack
Pocatello, Idaho 83204-0004
1-208-234-2234

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Page 4 of 14

'87 NOV 24 A9:42

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK, IDAHO

BOB TRIPP, ROBERT THOMPSON,)
d/b/a/ GIBSON JACK, 1st)
ADDITION,)
Plaintiffs,)
vs.)
BANNOCK COUNTY COMMISSIONERS,)
Defendants.)

CASE NO. 39322-C

MEMORANDUM DECISION AND
ORDER

The court has reviewed the file, record and transcript of the county hearings, statement of position, and points and authorities filed by counsel.

In September 1984, the Bannock County Commissioners (Board) approved a conceptual subdivison plan filed by plaintiffs/petitioners (Developers) on the condition that the subdivision would be connected to the Pocatello Municipal Water System. Developer's petitioned for judicial review and in January 1985, Judge McDermott remanded to the Board for further hearing. At this additional hearing the Board issued the modified findings of facts and conclusions of law but adhered to its prior decision requiring connection to the municipal water system. A second petition has been filed with this court asking for judicial review and additionally for the presentation of additional evidence. Developers complain that the Board had given approval to other proposed subdivisions without requiring the developers to demonstrate the availability of water as they

had required of these petitioners. The testimony of petitioner's expert, Mr. Chapman, is requested to clarify the record because of "inaudible" gaps in the transcript.

Notwithstanding the allegation that the Board may have approved other subdivision proposals without the scrutiny given to available water supply as it has to the present application, there is nothing in the record which would indicate that the conditional approval of this plate was arbitrary or otherwise improper. The burden is on the petitioner to demonstrate the infirmity of the Board's decision and they have not sustained this burden.

It is clear from the transcript that the availability of adequate water was very much in dispute. Several expressions of concern were made to the Board about the sufficiency of water, availability and the possible impact of additional users and in light of these concerns it is not arbitrary nor unreasonable for the Board to require the developer to guarantee the availability of an adequate water supply before accepting the proposed subdivision. A local governing Board may be empowered to act to promote and preserve the general welfare of the community, and in providing for an adequate water supply as one of the means by which to do so. City of Lewiston vs Knieriem, 107 Idaho 80, 685 P.2d 821 (1984).

Once it is recognized that the Board is empowered to require the Developer to demonstrate that sufficient water is available,

the inquiry then focuses on whether or not there was substantial evidence to support the Board's findings that adequate ground water was not available in this case. According to petitioner's own expert, Mr. Chapman, the ground water supply is inadequate to meet the requirements that had been established by the Board. The finding by the Board that domestic wells will not be capable of producing sufficient water to supply the lots is reasonable is supported by substantial evidence and will not be disturbed on appeal.

The fact that there are a number of "inaudible" gaps in the transcript does not require further testimony by Mr. Chapman. The transcript is, while not ideal, sufficient to allow the court to evaluate the reasonableness of the board's findings.

IT IS THEREFORE ORDERED that the petition for Judicial Review of Administrative Proceedings and For Leave To Present Additional Evidence each are denied and the decision of the Bannock County Commissioners herein is affirmed.

DATED this 18th day of November, 1987.


WALLACE M. TRANSTRUM
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 24 day of November,
1987, I mailed/served a true copy of the foregoing document on
the attorney(s)/person(s) listed below by mail with correct
postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):

Method of Service:

Charles C. Just, Esq.
WEINPEL, WOOLF, JUST, COMBO
& DAVIS
Box 935
Idaho Falls, ID 83402

U.S. Mail

Eric Storm, Esq.
Deputy Prosecuting Attorney
Bannock County Courthouse
Pocatello ID 83201

U.S. Mail

LARRY GHAN, CLERK

by:

Cindy Guendee

Judgment Docket #19, 12/22/87, gaa

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON,)
dba GIBSON JACK, 1st)
ADDITION,)
Plaintiff,)
vs.)
BANNOCK COUNTY COMMISSIONERS,)
Defendant.)

Podged 9/14/88
Wm. Transtrum
District Judge
CASE NO. 39322-C
MINUTE ENTRY AND ORDER

Following this court's Minute Entry and Order of September 22, 1987, the parties filed their briefs and upon review the court entered its Memorandum Decision and Order of November 18, 1987. Subsequently the petitioners advised the court that they had misunderstood the court's order concerning oral argument, and were then permitted to present oral argument to the court and review their position.

The court again thoroughly review the file, the transcript of proceedings, the points and authorities filed and oral argument and is again unpersuaded of the merit of petitioner's position.

IT IS THEREFORE ORDERED that this court's Memorandum Decision and Order of November 18, 1987, is affirmed as the final order of this court and this cause.

DATED this 14th day of September, 1988.

Wm. Transtrum
WALLACE M. TRANSTRUM
District Judge

MAY 07 1998

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 15th day of September, 1988, I mailed/served a true copy of the foregoing document on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):

Method of Service:

Charles C. Just, Esq.
WEINPEL, WOOLF, JUST, COMBO & DAVIS
545 Shoup Avenue, Suite 227
P O Box 936
Idaho Falls, ID 83402-0936

U.S. Mail

Eric Storm, Esq.
Attorney At Law
P O Box P
Pocatello ID 83205

U.S. Mail

MYRNA W. ARCHIBALD, CLERK

by: Vida Mascareñas
Deputy Clerk

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MINUTE ENTRY AND ORDER 2

Copy #4
RECEIVED MAY 1 1996
C. Fisher
Copy received
CDHR
M. Egli

TO: Bannock County Commissioners
Bannock County Court House
Pocatello, Idaho 83201

FROM: Richard M. Hollingsworth
9502 Gibson Jack Creek
Post Office Box #4
Pocatello, Idaho 83204-0004

REFERENCE: Wildhorse Ridge Subdivision

April 30th, 1996

Dear Commissioners:

We hereby appeal the decision which was revealed by the Land Development Board of Bannock County in reference to the WILDHORSE RIDGE SUBDIVISION and ask for an amended and overturned decision pertaining to the proposed development.

Residents living near the proposed South Pocatello development have expressed and testified about the affect this will have on our water supply. The water table in Gibson Jack is deep and the water there fluctuates "*considerably*" with current water demands. A specific concern is that the master plan does not incorporate a central water system nor city water usage in its development.

No complete, proper or current study has been done on the water table. The developer is more or less guaranteeing adequate water even though most residents now living there are experiencing difficulties. This concern has been expressed at every meeting by the residents around this proposed subdivision.

A document was given to the Board in February of 1984, signed by 14 individuals having well problems, who have given testimony before the board of their problems and concerns dealing with water.

This document from Lyle Swank, PE, the Assistant Watermaster, dated May 18, 1984, where he stated and I quote:

"The time of maximum water recharge and maximum water drawdown will lag the time of surface water recharge by a time period dependent upon the depth, porosity or permeability and slope or gradient. In order to determine the trend of groundwater rise or decline, data should be collected for a long enough time period to show the seasonal fluctuations and the annual changes in both the peaks and minimum levels associated with non-static groundwater levels. The water level of a confined aquifer is dependent upon the recharge minus the withdrawals from that system." To this date - no proper study has been done, as it should be to determine the trend of groundwater rise and decline.

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In a separate letter from the State of Idaho, Department of Water Resources, Mr. Kenneth Dunn and Mr. Glen Saxton, Chief of Operations Bureau, expressed this - and it was submitted to the Bannock County Commissioners, and the Land Development Board for Bannock County, in 1984, and we quote:

"...the department does have the authority to designate groundwater management areas or critical areas.....if determined to be appropriate. To be more specific, in an area designated as critical, the only type of water appropriation that can be made is single family domestic or stockwater use from wells.

A central deep domestic well possibly would have less effect on existing wells than numerous small wells...

...an area as a groundwater management area raises a FLAG that the area may be approaching critical conditions but provides more alternatives as far as monitoring and management."

Proof was also presented to the Land Development Board and Bannock County Commissioners on the amount of precipitation the area receives. The United States Weather Bureau classified this area as a drought or critical supply area for water. This information came from records of Meteorological Data for Current Years, and Normals, Means, and Extremes in Precipitation in inches, by Water equivalent and Snow, Ice pellets.

It was requested in October of 1984, that Paul M. Castelin (Hydrogeologist - for the State of Idaho, Department of Water Resources, State Office, out of the Governor's office and through the Director), to personally send Commissioner Carolyn Meline a letter - which he did and we quote from his letter:.

..."the proposed Gibson Jack subdivision is in an area thought to be underlain by the Salt Lake Formation, a geologic formation that is unpredictable in yielding water to wells; yields can be fairly high in places, but often are quite poor.

Drillers logs that supply well test information including drawdown as well as discharge data, have only been somewhat helpful in determining aquifer characteristics. These data indicate relatively POOR AQUIFERS developed by wells in the vicinity of Sections 18 and 19, T7S, R35E....

....drillers describe it as a relatively poor yielding aquifer which underlies the area to depths of up to 200 feet. As a result, more severe interference effects can be expected between new and existing wells than if the aquifer was more productive.

....source of water for the subdivision is the city of Pocatello. Perhaps the most obvious source of groundwater (to a geologist) is the alluvium of the Portneuf River Valley.

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Individual wells providing irrigation water are likely to be marginal in production capacity and would have more serious potential drawdown effects on water levels in surrounding wells, due to their higher pumpage rate and more continuous pumping schedule.

A competent hydrogeologic consulting firm with excellent references should be retained to conduct aquifer tests in the Gibson Jack area, analyze the results of the tests and provide projections of pumpage effects based on those analyses A consultant should be retained to perform appropriate well tests, develop well construction specifications, supervise the drilling and development of a test well in the alluvium and to provide a comprehensive report to the Bannock County Commission.....

END OF QUOTE.

Chris Pine had a well drilled behind Hollingsworth's home by Cushman Drilling from Blackfoot. After the well was completed, Mr. Pine brought in a portable pump and pumped water out for 4 to 7 hour periods each day to our memory, for two or three days.

After which this well was not rated for four households but two, and was drilled the same old fashion way every other well was drilled up here.

Modern technology was not used during the drilling and observation of this well. Information given during the drilling process, was that it initially pump 78 gallons per minute and reduced to 35 gallons per minute.

Chris Pine claims that 35 gallons is sufficient for seven households, but according to architectural standards 15 gallons per household is a minimum with out unusual storage facilities. At this point please recall what has been indicated above from the Assistant Watermaster, in paragraph six (6).

District Judge Wallace M. Transtrum, on the 18th of November, 1987, in is MEMORANDUM DECISION AND ORDER, stated in the second paragraph, and we quote:

..."In September 1984, the Bannock County Commissioners (Board) approved a conceptual subdivision plan filed by plaintiffs/ petitioners (Developers) on the condition that the subdivision would be connected to the Pocatello Municipal Water System".... end of quote. A complete copy of this signed document is attached to this appeal for your review.

Also attached is a Final Order of the court dated on 14 September, 1988. Where we quote the last paragraph as follows:

...."IT IS THEREFORE ORDERED that this court's Memorandum Decision and Order of November 18, 1987, is affirmed as the final order of this court and this cause".... end of quote

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A report issued by John Welhan, Idaho Geological Survey, "The Lower Portneuf River Valley Aquifer, A Geologic / Hydrologic Model and its Implications for Wellhead Protection Strategies" - in their Final Draft, states:

As a result of the survey the water table is based on runoff and seasonal in nature. It is greatly affected by drought, and the discharge is rated extremely low, and is very high in minerals and chemicals due in part of leaching of septic systems, nitrates from fertilizers and extreme salt content from unknown sources.

As Alpine Engineering did in 1984, the same tactics were done by Mr. Pine. The "well test" Mr. Pine performed was not run in accordance with established methods of testing aquifers to determine their characteristics; but perhaps, as with Alpine Engineering in 1984, that was not the intent at all by Mr. Pine. And the data as you might call it, is very misleading.

Commissioners - please look at the whole picture of what is going to happen in the future. To the West of this proposed subdivision, are hundreds of acres to be developed in the future by Mr. McDevitt, (location - driving up Johnny Creek Road, and at the end of it, is the property that ties into Gibson Jack).

To the South West, Bob Tripp's property, also hundreds of acres, (location is South of Gibson Jack Road, near Pocatello's water shed).

In this proposed subdivision - approximately 10,416 gallons of water will be used a day, just for domestic use with the number of proposed dwellings.

If you think about the City of Pocatello - and their Annex of ground around their boundaries, it really makes sense to do it right. Bring the city water in now, and the Engineering Departments, construct a plan for the future developments around this proposed one. When the City of Pocatello pulls us into the their city limits, it will be done with proper affects - as the Old Orchard area is at the base of Gibson Jack, and what is being presently done at the end of Johnny Creek Road in that new development.

Tom Decker, with the City Engineering Water Department, stated it cost \$18.00 per foot for a 12 inch pipe for running water.

When looking at the total cost for construction of bringing water into the area, for materials consisting of pipe, digging trenches, and labor, it would cost approximately \$25.00 per foot. Since the City is involved, I feel it could be a joint venture in cost for the implementing of water into this subdivision by the Contractor and the City of Pocatello. Where the City receives moneys for the use of the water, they will have their pay back -

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and any maintenance for the water line should be free for several years to recover their cost.

The Bannock County Planning and Development Counsel conducted a public hearing on Tuesday (April 23, 1996), the Chair aloud unlimited time for the developers to speak and allowed three minutes a piece for apposing opinion. The Counsel obviously favor the developers opinion. In fact prime agriculture land use was completely skip over when in fact the ground is prime agriculture ground that has been held by a developer for twenty years. The vote to pass appeared to be predetermined when in fact board member Floyd Johnson, stated on record that he was glad this sub division was up Gibson Jack and not by his residence. After which he voted to pass the preliminary Plat.

This board does not follow standards to which it should be held and conducted itself in a unprofessional ineffective manner.

Some of the residents who presently live up Gibson Jack have every intention, after speaking with legal Counsel from Jones Chartered in Pocatello, to file a law suite against Bannock County, and Developers of the Wildhorse Ridge Subdivision when their wells start having problems with water levels and pumping air.

With reference to Mr. Guy Anderst, Chris Pein, and Mr. Tom Iverson, they had to of known about the past rulings and concerns of the property owners before purchasing this ground from Mr. Bob Tripp. Knowing they would need to bring city water in.

Attached is a copy from the Subdivision Plan Review Committee (Department Review and Approval Summary), first page, center section - quote.. "Water System to be constructed to City Standards - Need plan for review - Connect to City Water" -.... end of quote. This is dated 6-21-95. Yet - this comment was never brought up in the public meetings.

Chris Pein is a member of the Community Development Committee for the City of Pocatello, some of us ask the question - Is this why the city has approved this preliminary plat with so few conditions ?

Some of us feel, that these developers want to come in, do as little as possible, sell for big bucks, and be gone to leave the county and us with the mess they leave behind. Fire-prevention, water retention, ingress and egress improvement, traffic problems and etc.

The Idaho Supreme Courts have made several rulings with regards to "FIRST GETS WATER RIGHTS" meaning, first in time is first in right. These decisions have been unanimously upheld.

We would appreciate any consideration you can give this

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request and would greatly appreciate a response to this appeal.

We the undersigned have expressed our concerns in all meetings, and respectfully request this appeal in behalf of these concerns, and ask that the Court Order signed on 14th September 1988 by District Judge Wallace M. Transtrum be up-held as well as the decision by the Bannock County Commissioners in 1984 & 1985 who were in office at that time.

Thank you for your attention in this matter.

<i>Edward M Hollingsworth</i>	<i>9502 Gibson Jack</i>	<i>234-2234</i>
<i>Mary Harding</i>	<i>9588 Heather Rd.</i>	<i>233-8298</i>
<i>Angie Nix</i>	<i>9559 HEATHER RD.</i>	<i>233-2647</i>
<i>John</i>	<i>9806 W. Gibson Jack Rd.</i>	<i>232-1403</i>
<i>Emmett R. Kelly</i>	<i>2917 N. Stephanie Rd.</i>	<i>234-2202</i>
<i>James L. Kelly</i>	<i>2917 N. Stephanie Rd.</i>	<i>234-2202</i>
<i>John Kelly</i>	<i>9685 W. Heather Rd.</i>	<i>233-7288</i>
<i>Danara Kelly</i>	<i>9685 Heather Rd.</i>	<i>233-7288</i>
<i>Kathy Musetty</i>	<i>9663 W. Heather Rd.</i>	<i>233-0516</i>
<i>Phil Musetty</i>	<i>9663 W. Heather Rd.</i>	<i>3-0516</i>
<i>Michael Oliver</i>	<i>9530 W. Heather Rd.</i>	<i>232-2861</i>
<i>Naoko Hocking</i>	<i>9588 W. Heather Rd.</i>	<i>233-8298</i>
<i>Linda Ryland</i>	<i>9431 W. Heather Rd.</i>	<i>232-5936</i>
<i>Theresa Ryland</i>	<i>936 CATHON</i>	<i>233-7364</i>
<i>John A. Ryland</i>	<i>75 Valleyview Dr.</i>	<i>232-8134</i>
<i>Robert Ryland</i>	<i>75 Valleyview Dr.</i>	<i>232-8134</i>
<i>Edward Ryland</i>	<i>3118 N. Stephanie Rd.</i>	<i>232-3089</i>
<i>Glenn Ryland</i>	<i>3118 N. Stephanie Rd.</i>	<i>232-3089</i>
<i>Donna Ryland</i>	<i>9252 W. Gibson Jack Rd.</i>	<i>232-1615</i>
<i>Donna Ryland</i>	<i>9259 W. Gibson Jack Rd.</i>	<i>233-7930</i>

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EXHIBIT "A"

Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, Section 19: E $\frac{1}{4}$ NW $\frac{1}{4}$, Lots 1 and 2.

EXCEPT: A parcel of land situated in the South Half of the Northwest Quarter of Section 19, Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, more particularly described as follows:

Commencing at the Center Quarter Corner of said Section, said point being marked by an aluminum cap stamped LS 968; thence South 89°54'16" West along the latitudinal centerline of said Section 737.50 feet to the TRUE POINT OF BEGINNING; said point being marked by a half inch iron pin tagged LS 968; thence continuing along said latitudinal centerline South 89°54'16" West, 885.00 feet to a half inch iron pin tagged LS 968, said point being on the South line of Gibson Jack Road, said line being measured at right angles to and paralleling 25 feet South of centerline of said road; thence North 55°01'27" East along said South line 858.93 feet to a half inch iron pin tagged LS 968; thence South 20°15'35" East, 523.26 feet to the latitudinal centerline of said Section, said point also being the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land situated in the South Half of the Southwest Quarter of the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, BANNOCK COUNTY, IDAHO. More particularly described as follows:

Beginning at the West Quarter Corner of said Section, said point being marked by a 5/8" rebar with a 2" Aluminum Cap stamped LS 968; thence North 89°54'16" East along the latitudinal Centerline of said Section 874.64 feet more or less to a point on the Northwesterly line of Gibson Jack Creek Road, said point being marked by a $\frac{1}{4}$ " iron pin stamped LS 968; thence North 55°01'27" East along said Northwesterly line of Gibson Jack Creek Road 94.36 feet to a $\frac{1}{4}$ " iron pin stamped LS 968; thence South 89°54'16" West parallel to the latitudinal centerline of said Section 952.10 feet more or less to a point on the West line of said Section, said point being marked by a $\frac{1}{4}$ " iron pin stamped LS 968; thence South 0°09'18" East along said West line 53.96 feet more or less to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A tract of land in the Southwest Quarter of the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, described as follows: BEGINNING at the West Quarter Corner of Section 19, Township 7 South, Range 35 East, Boise Meridian, said Corner marked by an iron pin with an aluminum cap stamped LS 968, as depicted on the Record of Survey Map recorded in the records of BANNOCK COUNTY as Instrument 658184; thence Northeasterly and Easterly along the West and North boundaries of the land depicted on the Record of Survey Map recorded in BANNOCK COUNTY as Instrument 657503, for the following two (2) courses:

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B.T.
L.J.

SUBDIVISION PLAN REVIEW COMMITTEE

DEPARTMENT REVIEW AND APPROVAL SUMMARY

SUBDIVISION Wild Horse Ridge (ACCI)

SKETCH

PRELIMINARY X

SHORT

FINAL

BUILDING DEPARTMENT

APPROVE

DISAPPROVE

APPROVE W/CONDITIONS

REVIEWED BY

DATE

WATER DEPARTMENT

APPROVE

DISAPPROVE

APPROVE W/CONDITIONS X

REVIEWED BY JF

DATE 6-21-95

the water system to be constructed to City Standards -
Need plan for review - Connect to City water -

ENGINEERING/STREETS DEPARTMENTS

APPROVE

DISAPPROVE

APPROVE W/CONDITIONS ✓

REVIEWED BY JFB

DATE 6-26-95

Curb and gutter and 40 ft section for road design ^{walls} show on
plan & storm water to be retained on site. Gibson Jack
Road to be paved in front of all lots with curb
and asphalt road.

Sidewalk in front of ^{residential} ~~residential~~

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3-3

94011108

1. North 60°17'36" East for a distance of 109.21 feet; thence
2. North 89°54'16" East for a distance of 857.10 feet to the Northeast Corner of the said land; thence North 00°09'18" West for a distance of 457.52 feet; thence South 89°54'16" West for a distance of 952.10 feet to an intersection with the West line of said Section 19; thence South 00°09'18" East along the West line of Section 19 for a distance of 511.48 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land in the E½NW¼ of Section 19, Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, more particularly described as follows:

BEGINNING at the Center Quarter Corner of said Section, said point being marked by an aluminum cap stamped LS 968; thence South 89°54'16" West along the latitudinal center line of said Section, 325 feet; thence North 3°47'21" West, 1,017.78 feet to a point on the South line of Gibson-Jack Road; said point being measured and parallel 25 feet South of the Center line of Gibson-Jack Road; thence North 45°2'37" East along said Section line of Gibson-Jack Road, 543.49 feet to the Intersection of said Section line and the meridional center line of said Section. Said point being marked by a ¼" aluminum pin LS 968; thence South 00°19'33" East along said meridional center line 1,399.03 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land located in the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, BANNOCK COUNTY, IDAHO and is more particularly described as follows:

BEGINNING at the Center Quarter Corner of said Section 19, Township 7 South, Range 35 East, Boise Meridian. Said Corner being an aluminum cap tagged L.S. 968; thence S 89°54'16" W along the center latitudinal line of said Section 325.00 feet to the TRUE POINT OF BEGINNING; thence continuing S 89°54'16" W along said center latitudinal line, 412.50 feet; thence N 20°15'35" W, 523.26 feet to the South right of way of Gibson Jack Creek Road; thence N 45°02'37" E along said South right of way, 743.50 feet; thence S 3°48'21" E, 1017.78 feet to the POINT OF BEGINNING.

B.T.
L.R.Z.

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MAY 07 1998

#6
Amy**SCHEDULE B**

Order No. 18682-B

Policy No. J 259391

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I**SECTION 1**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

SECTION 2

1. General Taxes for 1994 are an accruing lien and not yet due and payable. Taxes which may be assessed and extended on any subsequent roll for the tax year 1994 with respect to new improvements and the first occupancy which may be included on the regular assessment roll and which are an accruing lien not yet due or payable.
2. Easement for PIPE LINE granted to CITY OF POCA TELLO recorded November 8, 1916, in Book 31, as No. 324.
3. Right-of-way granted to AMERICAN TELEPHONE AND TELEGRAPH COMPANY recorded as Instrument No. 279186.

continued on page 2

MICROFILMED
MAY 07 1988



SCHEDULE B
ORDER NO. 18682-B
POLICY NO. J 259391
PAGE 2

4. Right-of-way granted to MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY recorded as Instrument No. 398605.
5. Right-of-way for GIBSON JACK ROAD running across the Southeast side of subject property.
6. REAL ESTATE MORTGAGE dated June 15, 1994 to secure an indebtedness in the principal sum of \$169,000.00, and any other amounts and/or obligations secured thereby.
Recorded: June 16, 1994, Instrument No. 94011109
Mortgagor: W. CHRIS PEIN, a married man dealing with his sole and separate property and GUY ANDERST, a married man dealing with his sole and separate property, and THOMAS IVERSON, an unmarried person
Mortgagee: BOB G. TRIPP and LA RAE TRIPP, husband and wife

MICROFILMED
MAY 07 1998

FIRST AMERICAN

LEGAL DESCRIPTION
Order No. 18682-B
Policy No. J 259391

SCHEDULE "C"

Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, Section 19: E $\frac{1}{2}$ NW $\frac{1}{4}$, Lots 1 and 2.

EXCEPT: A parcel of land situated in the South Half of the Northwest Quarter of Section 19, Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, more particularly described as follows:

Commencing at the Center Quarter Corner of said Section, said point being marked by an aluminum cap stamped LS 968; thence South 89°54'16" West along the latitudinal centerline of said Section 737.50 feet to the TRUE POINT OF BEGINNING; said point being marked by a half inch iron pin tagged LS 968; thence continuing along said latitudinal centerline South 89°54'16" West, 885.00 feet to a half inch iron pin tagged LS 968, said point being on the South line of Gibson Jack Road, said line being measured at right angles to and paralleling 25 feet South of centerline of said road; thence North 55°01'27" East along said South line 858.93 feet to a half inch iron pin tagged LS 968; thence South 20°15'35" East, 523.26 feet to the latitudinal centerline of said Section, said point also being the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land situated in the South Half of the Southwest Quarter of the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, BANNOCK COUNTY, IDAHO. More particularly described as follows:

Beginning at the West Quarter Corner of said Section, said point being marked by a 5/8" rebar with a 2" Aluminum Cap stamped LS 968; thence North 89°54'16" East along the latitudinal Center-line of said Section 874.64 feet more or less to a point on the Northwesterly line of Gibson Jack Creek Road, said point being marked by a $\frac{1}{4}$ " iron pin stamped LS 968; thence North 55°01'27" East along said Northwesterly line of Gibson Jack Creek Road 94.36 feet to a $\frac{1}{4}$ " iron pin stamped LS 968; thence South 89°54'16" West parallel to the latitudinal centerline of said Section 952.10 feet more or less to a point on the West line of said Section, said point being marked by a $\frac{1}{4}$ " iron pin stamped LS 968; thence South 0°09'18" East along said West line 53.96 feet more or less to the TRUE POINT OF BEGINNING.

continued on page 2

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MAY 07 1968



LEGAL DESCRIPTION
ORDER NO. 18682-B
POLICY NO. J 259391
PAGE 2

ALSO EXCEPTING THEREFROM:

A tract of land in the Southwest Quarter of the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, described as follows: BEGINNING at the West Quarter Corner of Section 19, Township 7 South, Range 35 East, Boise Meridian, said Corner marked by an iron pin with an aluminum cap stamped LS 968, as depicted on the Record of Survey Map recorded in the records of BANNOCK COUNTY as Instrument 658184; thence Northeasterly and Easterly along the West and North boundaries of the land depicted on the Record of Survey Map recorded in BANNOCK COUNTY as Instrument 657503, for the following two (2) courses:

1
North 60°17'36" East for a distance of 109.21 feet; thence

2
North 89°54'16" East for a distance of 857.10 feet to the Northeast Corner of the said land; thence

North 00°09'18" West for a distance of 457.52 feet; thence South 89°54'16" West for a distance of 952.10 feet to an intersection with the West line of said Section 19; thence South 00°09'18" East along the West line of Section 19 for a distance of 511.48 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land in the E.N.W.¼ of Section 19, Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, more particularly described as follows:

BEGINNING at the Center Quarter Corner of said Section, said point being marked by an aluminum cap stamped LS 968; thence South 89°54'16" West along the latitudinal center line of said Section, 325 feet; thence North 3°47'21" West, 1,017.78 feet to a point on the South line of Gibson-Jack Road; said point being measured and parallel 25 feet South of the Center line of Gibson-Jack Road; thence North 45°2'37" East along said Section line of Gibson-Jack Road, 543.49 feet to the Intersection of said Section line and the meridional center line of said Section. Said point being marked by a ¼" aluminum pin LS 968; thence South 00°19'33" East along said meridional center line 1,399.03 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land located in the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, BANNOCK COUNTY, IDAHO and is more particularly described as follows:

MICROFILMED

MAY 07 1998

continued on page 3

FIRST AMERICAN

SCHEDULE B
ORDER NO. 18682-B
POLICY NO. J 259391
PAGE 3

BEGINNING at the Center Quarter Corner of said Section 19, Township 7 South, Range 35 East, Boise Meridian. Said Corner being an aluminum cap tagged L.S. 968; thence S $89^{\circ}54'16''$ W along the center latitudinal line of said Section 325.00 feet to the TRUE POINT OF BEGINNING; thence continuing S $89^{\circ}54'16''$ W along said center latitudinal line, 412.50 feet; thence N $20^{\circ}15'35''$ W, 523.26 feet to the South right of way of Gibson Jack Creek Road; thence N $45^{\circ}02'37''$ E along said South right of way, 743.50 feet; thence S $3^{\circ}48'21''$ E, 1017.78 feet to the POINT OF BEGINNING.

MICROFILMED
MAY 07 1998

3-1
WARRANTY DEED

For Value Received **BOB G. TRIPP and LA RAE TRIPP, husband and wife** **94011108**

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

**GUY ANDERST, A MARRIED MAN DEALING WITH HIS SOLE AND SEPERATE PROPERTY AND
W. CHRIS PEIN, A MARRIED MAN DEALING WITH HIS SOLE AND SEPERATE PROPERTY
AND THOMAS IVERSON, AN UNMARRIED MAN**

whose address is: P.O. Box R Pocatello, Idaho 83206

Hereinafter called the Grantee, the following described premises situated in **BANNOCK** County, Idaho, to-wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: **JUNE 15, 1994**

Bob G. Tripp
BOB G. TRIPP

La Rae Tripp
LA RAE TRIPP

STATE OF IDAHO)

COUNTY OF BANNOCK)

On This 15TH day of JUNE, in the year 1994, before me, a Notary Public in and for said State, personally appeared **BOB G. TRIPP and LA RAE TRIPP**, known or identified to me to be the person(s) whose name(s) ARE subscribed to the within Instrument, and acknowledged to me that **THEY** executed the same.

NOTARY SEAL

94011108
NO. 617
RECORDED AT REQUEST OF Larry W. Shan Notary Public of Idaho
FIRST AMERICAN TITLE Residing at **POCATELLO, ID.**
'94 JUN 16 A9 46 Commission Expires: 4-28-99

OFFICIAL RECORD BOOK NO. 617
BANNOCK COUNTY IDAHO
LARRY W. SHAN RECORDS
EE 9.00 DEPUTY 220

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MAY 07 1998

FILED
LARRY W. GHAN
CLERK OF DISTRICT COURT
BANNOCK COUNTY IDAHO

'87 NOV 24 A9:42

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK, IDAHO
BY *Richmond*

BOB TRIPP, ROBERT THOMPSON,)
d/b/a/ GIBSON JACK, 1st)
ADDITION,)
Plaintiffs,)
vs.)
BANNOCK COUNTY COMMISSIONERS,)
Defendants.)

CASE NO. 39322-C

MEMORANDUM DECISION AND
ORDER

The court has reviewed the file, record and transcript of the county hearings, statement of position, and points and authorities filed by counsel.

In September 1984, the Bannock County Commissioners (Board) approved a conceptual subdivision plan filed by plaintiffs/petitioners (Developers) on the condition that the subdivision would be connected to the Pocatello Municipal Water System. Developer's petitioned for judicial review and in January 1985, Judge McDermott remanded to the Board for further hearing. At this additional hearing the Board issued the modified findings of facts and conclusions of law but adhered to its prior decision requiring connection to the municipal water system. A second petition has been filed with this court asking for judicial review and additionally for the presentation of additional evidence. Developers complain that the Board had given approval to other proposed subdivisions without requiring the developers to demonstrate the availability of water as they

MEMORANDUM DECISION
AND ORDER 1

MAY 07 1988

had required of these petitioners. The testimony of petitioner's expert, Mr. Chapman, is requested to clarify the record because of "inaudible" gaps in the transcript.

Notwithstanding the allegation that the Board may have approved other subdivision proposals without the scrutiny given to available water supply as it has to the present application, there is nothing in the record which would indicate that the conditional approval of this plate was arbitrary or otherwise improper. The burden is on the petitioner to demonstrate the infirmity of the Board's decision and they have not sustained this burden.

It is clear from the transcript that the availability of adequate water was very much in dispute. Several expressions of concern were made to the Board about the sufficiency of water, availability and the possible impact of additional users and in light of these concerns it is not arbitrary nor unreasonable for the Board to require the developer to guarantee the availability of an adequate water supply before accepting the proposed subdivision. A local governing Board may be empowered to act to promote and preserve the general welfare of the community, and in providing for an adequate water supply as one of the means by which to do so. City of Lewiston vs Knieriem, 107 Idaho 80, 685 P.2d 821 (1984).

Once it is recognized that the Board is empowered to require the Developer to demonstrate that sufficient water is available,

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MAY 07 1998

the inquiry then focuses on whether or not there was substantial evidence to support the Board's findings that adequate ground water was not available in this case. According to petitioner's own expert, Mr. Chapman, the ground water supply is inadequate to meet the requirements that had been established by the Board. The finding by the Board that domestic wells will not be capable of producing sufficient water to supply the lots is reasonable is supported by substantial evidence and will not be disturbed on appeal.

The fact that there are a number of "inaudible" gaps in the transcript does not require further testimony by Mr. Chapman. The transcript is, while not ideal, sufficient to allow the court to evaluate the reasonableness of the board's findings.

IT IS THEREFORE ORDERED that the petition for Judicial Review of Administrative Proceedings and For Leave To Present Additional Evidence each are denied and the decision of the Bannock County Commissioners herein is affirmed.

DATED this 18th day of November, 1987.


WALLACE M. TRANSTRUM
District Judge

MICROFILMED

MAY 07 1998

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 24 day of November,
1987, I mailed/served a true copy of the foregoing document on
the attorney(s)/person(s) listed below by mail with correct
postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):

Method of Service:

Charles C. Just, Esq.
WEINPEL, WOOLF, JUST, COMBO
& DAVIS
Box 935
Idaho Falls, ID 83402

U.S. Mail

Eric Storm, Esq.
Deputy Prosecuting Attorney
Bannock County Courthouse
Pocatello ID 83201

U.S. Mail

LARRY GHAN, CLERK

by: Cindy Guendler

Judgment Docket #19, 12/22/87, gaa

MICROFILMED

MAY 07 1988

MEMORANDUM DECISION
AND ORDER 4

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON,)
dba GIBSON JACK, 1st)
ADDITION,)
Plaintiff,)
vs.)
BANNOCK COUNTY COMMISSIONERS,)
Defendant.)

Podged 9/14/88
Wm. Transtrum
District Judge
CASE NO. 39322-C
MINUTE ENTRY AND ORDER

Following this court's Minute Entry and Order of September 22, 1987, the parties filed their briefs and upon review the court entered its Memorandum Decision and Order of November 18, 1987. Subsequently the petitioners advised the court that they had misunderstood the court's order concerning oral argument, and were then permitted to present oral argument to the court and review their position.

The court again thoroughly review the file, the transcript of proceedings, the points and authorities filed and oral argument and is again unpersuaded of the merit of petitioner's position.

IT IS THEREFORE ORDERED that this court's Memorandum Decision and Order of November 18, 1987, is affirmed as the final order of this court and this cause.

DATED this 14 day of September, 1988.

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MAY 07 1988

Wm. Transtrum
WALLACE M. TRANSTRUM
District Judge

Legals

NOTICE OF
APPLICATION FOR
WATER RIGHT

The Following applica-
tion(s) have been filed
to appropriate the public
waters of the State of
Idaho:

29-08174
RUSH, EVELEE HILL
PO BOX 4905
POCATELLO, ID 83205
Source:
SPRING
Tributary: PORTNEUF
RIVER
Diversion Pt: LOT 1
(SESE) Sec 21 T 09S
R 38E in BANNOCK
County.
Use: COMMERCIAL
Total Diversion:
(1.510 CFS)
Date Filed: 7/11/1996
In: BANNOCK County
T09S R38E S21 Lot 1
(SESE)

29-08175
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: NENW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08176
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: SENW Sec
19 T 07S R 35 E in
BANNOCK
County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SENW

29-08177
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: SWNW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08178
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: SWNW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08179
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: SWNW Sec
19 T 07S R 35 E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08180
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: NENW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08181
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: NENW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08182
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: SWNW Sec
19 T 07S R 35E in BAN-
NOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08183
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: NWNW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08184
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: NWNW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08185
BECKSTROM, KELLY

4464 HOLLOW RD
NIBLEY, UT 84321
Source: SPRING
Tributary: SINKS
Diversion Pt: NESWNW
Sec 21 T 06S R 38E in
CARIBOU County.
Use: DOMESTIC (0.040
CFS)
STOCKWATER (0.020
CFS)
Total Diversion: (0.060
CFS)
Date Filed: 7/9/1996
In: CARIBOU County
T06S R38E S21 SWNW

The permit(s) will be sub-
ject to all prior water
rights. Protests must be
filed with the applicant
and the Director, Dept.
of Water Resources,
along with a \$25.00 fil-
ing fee, Eastern Region,
900 N. Skyline, Idaho
Falls, Idaho 83402 on
or before AUGUST 19,
1996.

KARL J. DREHER,
Director
August 1, 8, 1996

Date Filed: 7/11/1996
In: BANNOCK County
T09S R38E S21 Lot 1
(SESE)

29-08175
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: NENW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08176
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: SENW Sec
19 T 07S R 35 E in
BANNOCK
County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SENW

29-08177
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: SWNW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08178
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: SWNW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08179
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: SWNW Sec
19 T 07S R 35 E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08180
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: NENW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08181
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: NENW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08182
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: NWNW Sec
19 T07S R 35E in BAN-
NOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08183
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: NWNW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08184
GIBSON JACK JOINT
VENTURE

PO BOX R
POCATELLO, ID 83206
Source: GROUND-
WATER
Diversion Pt: NWNW Sec
19 T 07S R 35E in
BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050
CFS)

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MAY 07 1998

7/12/1996
Qmf #2

Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW
29-08185
BECKSTROM, KELLY
4464 HOLLOW RD
NIBLEY, UT 84321
Source: SPRING
Tributary: SINKS
Diversion Pt: NESWNW
Sec 21 T 06S R 38E in
CARIBOU County.
Use: DOMESTIC (0.040
CFS)
STOCKWATER (0.020
CFS)
Total Diversion: (0.060
CFS)
Date Filed: 7/9/1996
In: CARIBOU County
T06S R38E S21 SWNW
The permit(s) will be sub-
ject to all prior water
rights. Protests must be
filed with the applicant
and the Director, Dept.
of Water Resources,
along with a \$25.00 fil-
ing fee. Eastern Region,
900 N. Skyline, Idaho
Falls, Idaho 83402 on
or before AUGUST 19,
1996.
KARL J. DREHER,
Director
August 1, 8, 1996
LN1658

525-7161 I.F.
327-7900
Date

MICROFILMED

MAY 07 1998

W # E022531

RECEIVED

AUG 29 1996

Department of Water Resources
Eastern Region

August 17, 1996

Clark Kelly
9625 Heather Road
Pocatello, ID 83204
1-208-233-7288

Department of Water Resources
150 Shoup Suite 15
Idaho Falls, ID 83402

Dear Mr. Karl J. Drecher,

Petition to intervene on
I wish to ~~protect~~ water permit applications 29-08175, 29-08176, 2908177, 29-08178, 29-08179, 29-08180, 29-008181, 29-08182, 29-08183, 29-08184 applied for by Gibson Jack Joint Venture and known as Wild Horse Ridge Subdivision. Simply stated, there is not enough water!

On August 3, 1984 the Bannock County Commissioners ruled that the water was suspect and city water and sewer was a requirement. The commissioners decision was upheld in court May 22, 1985, November 24, 1987, and finally September 14, 1988. (Case # 39322-C).

New owners, Gibson Jack Venture, breezed through the city and county commissioners who fear lawsuits. They appear to be politically connected.

Even though much evidence of water problems was produced it was agreed to four households per well by the commissioners.

First of all, wells that produce as little as fifteen G.P.M. will not support four households.

Secondly, all testing was done in the spring. All our wells are proven (February, 1995 Draft Final Report by John Welhan, Chris Meehan, and Ted Reid of Idaho State University) to be base on runoff. Fall tests are much worse. Recharge rates are extremely low and neighboring wells greatly effect others.

Finally, water quality is poor according to Janet Crockett, Senior Advisor to State Water Quality Board. My hard **MICROFILMED** the 478 and nitrates sometimes exceed 12.

MAY 07 1998

Gibson Jack Ventures claim I do not have a water right, although I have an approved and paid for permit # 29-07846 dated August 8, 1988. If more permits are issued up Gibson Jack I will have no choice but to drill a new well.

I am already spitting air despite having a near artesian well in 1988. My water table is down near 100 feet in eight years. (Total depth 200 feet).

Since the Wild Horse Subdivision is in the city impact zone of Pocatello, and since the lots are small by country standards, I see no reason why a connection to city water should not be a requirement.

Sincerely,


Clark Kelly

MICROFILMED
MAY 07 1998

The Law Offices of

F. Randall Kline, Chartered
A Professional Corporation

August 26, 1996

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

RECEIVED

AUG 27 1996

Department of Water Resources
Eastern Region

Harold W. Jones
Water Rights Supervisor
Idaho Department of Water Resources
900 N. Skyline Drive
Idaho Falls, Idaho 83402-1718

Re: Gibson Jack Joint Venture
Application for Permit No. 29-08175 thru 29-08184

Dear Mr. Jones:

In reference to the protest filed by Richard Hollingsworth, let me offer the following.

1. Having dealt with Mr. Hollingsworth substantially in the past, there is no benefit in contacting Mr. Hollingsworth directly or attempting to resolve the protest, as he appears to be of the opinion, "don't confuse me with facts, my mind is made up".

2. Richard Hollingsworth has demonstrated an ability to do whatever he can to prevent this development from taking place.

3. It is requested that a hearing before a hearing officer be scheduled as soon as possible to proceed with this matter. It appears that one of Mr. Hollingsworth's tactics is to cause delay for delay sake.

4. The basis for Mr. Hollingsworth's contentions seem to be based primarily on another development based upon different density and other information.

On behalf of the Gibson Jack Joint Venture and the placement of their domestic wells for the residential subdivision, they are now prepared to address each of the issues presented in conformance with Idaho Code § 42-203. As such, it is requested that a hearing before a hearing officer be expedited in this matter, seeking to obtain final approval of the application for the domestic wells. Thank you for your courtesies in this matter. If you have any comments or questions, please do not hesitate to contact me.

Sincerely,


F. RANDALL KLINE

FRK:ljw

c: Chris Pein
Richard Hollingsworth

MAY 07 1998

29-08184

GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206

Source: GROUNDWATER

Diversion Pt: NWNW Sec 19 T 07S R 35E in BANNOCK County.

Use: DOMESTIC	(	0.050 CFS)
Total Diversion:	(	0.050 CFS)

Date Filed: 7/12/1996

In: BANNOCK County
T07S R35E S19 NWNW

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MAY 07 1998



State of Idaho
DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 17, 1996

GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO ID 83206

RE: Notice of Application for Permit 29-08175 thru 29-08184

Dear Applicant:

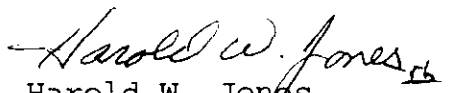
The Department of Water Resources acknowledges receipt of your water right applications. This office is currently in the process of advertising the applications in the Idaho State Journal on August 1 & 8, 1996. The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this 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 about five weeks. State Office Personnel will conduct a complete review prior to final processing of the applications and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

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

Sincerely,


Harold W. Jones
Water Right Supervisor

HWJ/rb[B

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MAY 07 1998