

Rocky Mountain Environmental Associates  
482 Constitution Way Ste 303  
Idaho Falls, ID 83402  
208-524-2353

Instrument # 214515

BEAR LAKE COUNTY  
3-21-2013 10:50:09 No. of Pages: 6  
Recorded for : THE RESERVE AT BEAR LAKE  
KERRY HADDOCK Fee \$25.00  
Ex-Officio Recorder Deputy *Andy Garner*  
Index to: AGREEMENT

## First Amendment to Water Supply Agreement

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THIS FIRST AMENDMENT TO WATER SUPPLY AGREEMENT (the "Amendment") is made and entered into this 20<sup>th</sup> day of February, 2013, by and between SAM'S HOLLOW WATER COMPANY, an Idaho nonprofit corporation (hereinafter "Sam's Hollow"), and THE CANYON ESTATES PROPERTY OWNERS ASSOCIATION AND ITS INDIVIDUAL LOT OWNERS (hereinafter referred to collectively as "CEPOA").

### RECITALS:

- A. On September 25, 2005, Sam's Hollow and CEPOA entered into a Water Supply Agreement (hereinafter "Agreement") that outlined specific rights and obligations of the parties with respect to the water supply of certain real property.
- B. The Agreement also addressed ownership, transfer, and expenses of the water rights and water systems, including operation and maintenance.
- C. Sam's Hollow transferred ownership of 22 lots of Water Right No. 11-7481 to CEPOA for use at The Pointe, in two portions of 14 lots and 8 lots, resulting in water right permit nos. 11-7641 and 11-7719 owned by CEPOA. The remaining portion of the original permit no. 11-7481 is owned by Sam's Hollow under the new permit no. 11-7718. These three permits shall collectively be referred to as the "Permits."
- D. The mitigation plan for CEPOA's two permits has not been amended since the change of ownership action.
- E. CEPOA filed an Application for Amendment of Permit No. 11-7719 on May 7, 2012 requesting to change the points of diversion and place of use from the authorized Sam's Hollow area to reflect those specific to CEPOA.
- F. Protests were filed by Pacificorp and Bear Lake Water Users Association against the application on the basis that the current mitigation allegedly was not being fulfilled.

G. Sam's Hollow, CEPOA, Bear Lake Watch, and water right consultants Rocky Mountain Environmental Associates, Inc. of Idaho Falls met together on September 5, 2012 to discuss the mitigation of the Permits.

H. The result of discussions held on September 5, 2012 was that mitigation was being fully executed but record keeping and reporting to IDWR and other necessary parties was not consistent and required better clarification.

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

1. **MITIGATION.** Sam's Hollow shall be responsible for providing the required mitigation, as described in the approved Mitigation Plan under the Permits, nos. 11-7718 (owned by Sam's Hollow) and 11-7641 & 11-7719 (owned by CEPOA). Sam's Hollow shall be responsible for maintaining or recording all measuring devices necessary to fulfill the required mitigation plan. Sam's Hollow shall continue to compile all data required by IDWR to show adequate mitigation, including but not limited to, amount of mitigation water needed, amount of mitigation water returned to Bear Lake, and number of additional acres required to be dried up for current mitigation needs.
2. **COST AND EXPENSES.** Sam's Hollow shall be solely responsible for all cost and expenses related to the mitigation of the Permits unless mutually agreed upon by both parties.
3. **COOPERATION.** The parties will cooperate and communicate with each other as may be reasonable and necessary with regard to the collection and reporting of information for mitigation water requirements.
4. **DEFAULT.** In the event any party fails to perform any of the terms, conditions, or provisions of this Agreement, and fails to cure such default within thirty (30) days of receipt of written notice of default, the non-defaulting party may elect to obtain specific performance of this Agreement, which is the sole and exclusive remedy available, as outlined under item 9, Dispute Resolution.
5. **RECORDING.** This Agreement will be recorded in the Bear Lake County Recorder's Office to give notice hereof.

6. **BINDING EFFECT.** All of the terms, conditions and covenants of this Agreement shall be binding upon the parties and shall inure to the benefits of all successors and assigns of the parties hereto.
7. **MODIFICATION OR REVOCATION.** This Agreement may be modified or revoked in writing upon the mutual consent of all the parties hereto, or their successors in interest.
8. **DISPUTE RESOLUTION.** Any substantial dispute between the parties shall be resolved in accordance with the following provisions:
  - a. **Mediation.** The parties shall designate a mediator and appear before the mediator and attempt to mediate a settlement of the dispute.
  - b. **Litigation.** If mediation is unsuccessful, either party may bring an action in Bear Lake County, Idaho to seek specific enforcement of its rights under this Amendment.
  - c. **Injunctive Relief.** Either party may request a Court to issue such temporary or interim relief (including temporary restraining orders and preliminary injunctions) as may be appropriate, either before or after mediation is commenced. The temporary or interim relief shall remain in effect pending the outcome of the mediation. No such request shall be a waiver of the right to submit any dispute to mediation.
  - d. **Mediation Costs.** The parties shall share equally in all expenses and costs and fees of the mediator. Each party shall be responsible for its own costs, attorney fees and witness fees, if any.
  - e. **Choice of Law and Venue.** This Amendment and the validity, interpretation and performance thereof shall be governed by and construed in accordance with the laws of the State of Idaho. The place of venue for all dispute resolution pursuant to this paragraph shall be Bear Lake County, Idaho, unless the parties mutually agree to another location.
  - f. **Attorneys Fees and Costs.** In the event that either party brings a legal action to seek specific performance of its rights under this Amendment, the prevailing party shall be entitled to receive judgment against the non-prevailing party for all of its attorneys fees, expert witness fees, and other costs incurred by the prevailing party in such litigation.

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

Sam's Hollow Water Company  
Attn: Brent Skinner  
595 S. Riverwoods Parkway, Ste 400  
Logan, UT 84321

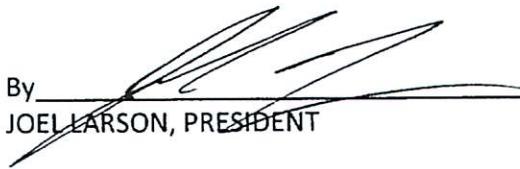
Canyon Estates Property Owners Association  
Attn: Jim McKinnis  
PO Box 177  
Fish Haven, ID 83287

10. **CONFLICTING PROVISIONS.** In the event that any provision of this Amendment conflicts with the existing provisions of the Agreement, the parties agree that the terms of this Amendment shall govern and control.

214515

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

SAM'S HOLLOW WATER COMPANY

By   
JOEL LARSON, PRESIDENT

CANYON ESTATES PROPERTY OWNERS ASSOCIATION

By   
CARL JAMES MCKINNIS IV, PRESIDENT

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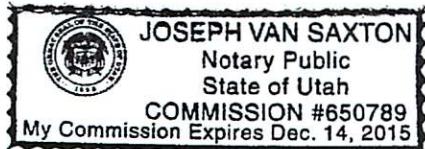
State of Utah

: ss

County of Cache

On this 25 day of February, 2013, before me, the undersigned Notary Public, in and for said State and County, personally appeared Joel Larson, known or identified to me to be the President of Sam's Hollow Water Company, whose name is subscribed to the within instrument and acknowledged to me that he is authorized and instructed to execute and has executed the same on behalf of said Company, and further acknowledged to me that said Company executed the same.

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



SEAL



Notary Public  
Residing at: Logan, UT  
My Commission Expires: Dec 14, 2015

State of Texas

: ss

County of Dallas

On this 20<sup>th</sup> day of February, 2013, before me, the undersigned Notary Public, in and for said State and County, personally appeared Carl James McKinnis iv, known or identified to me to be the President of Canyon Estates Property Owners Association, whose name is subscribed to the within instrument and acknowledged to me that he is authorized and instructed to execute and has executed the same on behalf of said Company, and further acknowledged to me that said Company executed the same.

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



Notary Public

Residing at: Bank of America MacArthur/Kinney  
My Commission Expires: 08-08-16