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April 16, 2007

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**Re: Proposal for Re-Incorporation and New Bylaws**

Dear Board of Directors:

I spoke with Ron Hamm last week by telephone in an effort to settle the differences between the Board and Mr. Lowder. This letter is a follow-up to that telephone conversation and includes a few items and Dr. Hamm's request.

It appears to me that there was some confusion about the significance of the last letter that I sent to the Board. I believe that this confusion is due to Board's apparent resistance to seeking and obtaining proper legal counsel. So I thought I would attempt to summarize the last letter in the following nutshell.

Based upon the law as it currently stands in Idaho, Mr. Lowder is legally entitled under Idaho Code §§ 42-111 and 42-227 to receive a water right from the IDWR for the use of 2500 gallons per day from the well on his property, which can be used for any purposes. As we have explained many times recently, Mr. Lowder has agreed to put a meter on his well and to use these 2500 gallons to supply water to his water slide and to drip irrigate a number of trees located

on his 13 acre property. We are confident in light of my experience practicing in this area of law that Mr. Lowder will be granted this water right following the hearing scheduled on May 8, 2007. He fully intends to use this water right for the disclosed purpose within the 2500 gallon limit placed upon it by statute.

As you are aware, Mr. Lowder also owns and possesses a share in Trout Creek. As a shareholder, he is entitled to receive culinary water in the same prorata amount as all other shareholders for use in and around his home. This is a property right that cannot be denied under the law. We understand the Board believes this includes in-home use and irrigation of up to ½ acres around the home in an amount of up to 13,000 gallons per day. We also understand that the Board is insistent that this Trout Creek water cannot be used to supply the water slide. As we have stated many times recently, Mr. Lowder has no intentions (and will not) use Trout Creek water for the water slide. Instead, it will be supplied by the IDWR water right described in the previous paragraph.

Mr. Lowder is entitled Trout Creek water for use in and immediately around his home. He is also legally and lawfully entitled to the IDWR water right discussed above for use in his water slide and for drip irrigation of trees not located immediately around his home. As should be perfectly clear, the uses of these two water sources do not overlap. Additionally, the sources of the Trout Creek water and the IDWR water right do not overlap and are completely separate – one coming from the Trout Creek pipe and the other coming from Mr. Lowder's well.

This is the nutshell: Mr. Lowder is legally and lawfully entitled to the use of both the Trout Creek water and the IDWR water discussed above, particularly because neither can on its own satisfy Mr. Lowder's water needs for both his home and slide. It is illegal and unlawful for the Board to take any action to deprive Mr. Lowder of his shareholder rights to receive Trout Creek water to his home. Regardless of whether you have received legal counsel or not, your misunderstanding and misinterpretation of Idaho Code § 42-111 does not provide any basis for denying Mr. Lowder his rights as a shareholder to water.

Mr. Lowder intends to obtain the IDWR water right discussed above for use in his water slide. In addition, Mr. Lowder does not intend to agree to the new proposed bylaws and does not intend to sign the proposed water users agreement because they unlawfully denying him the right to use both his Trout Creek water and his IDWR water right. **If the Board deprives Mr. Lowder of Trout Creek water because he is granted the IDWR water right to supply his slide and to drip irrigate some trees, Mr. Lowder will immediately file a complaint and sue the Board for a violation of his property rights as a shareholder in Trout Creek.** We are confident that the Judge will immediately force the Board to turn Mr. Lowder's water back on and will also order the Board to pay to Mr. Lowder any and all damages that he might incur, including but not limited to his attorney fees.

This scenario will likely result in litigation that will take at least a year, with another possible year for an appeal. Litigation costs will definitely be in the thousands of dollars. As

mentioned, we are confident that you will not only pay your own attorney but will be also required to compensate Mr. Lowder for his attorney fees as well.

In an effort to avoid this protracted scenario and to begin mending fences between the parties, Mr. Lowder requests that the Board agrees in writing to allow Mr. Lowder to use his Trout Creek water in an amount up to 13,000 gallons per day (1) for in-home use; (2) for drip irrigation up to ½ acre of the trees on his property calculated based upon the square footage of the trees' canopy; and (3) for use of 2,500 gallons per day in his water slide. It is requested that Mr. Lowder never be required to again seek permission from the Board for these uses.

If the Board can agree to these terms, Mr. Lowder would agree to install a meter on his Trout Creek water line and on the line to his water slide. He would agree to install the requested backflow device. He would agree to change the size of the pipe as previously requested. He would also agree to limit the number of people sliding in the water slide to 30 people at any given time. He would also allow the Board to inspect his water system and his water meters as provided in the new proposed bylaws. He will also ensure to that his well is not used in the absence of any other water rights and that it is not connected to the Trout Creek water system in any way. Lastly, he would agree to withdraw his application for the IDWR water right and cancel the hearing scheduled for May 8, 2007.

It is requested that the Board hold a special meeting to consider this request and that an answer be provided promptly. At 5:00 pm on April 23, 2007, this offer will expire.

This proposal will alleviate the need for a very costly and lengthy lawsuit. It will also provide the Board with the authorization to inspect Mr. Lowder's water system and water use. It will also satisfy the Board's concerns with the IDWR water right. Ultimately, it is hoped that this can be the beginning of a fresh start for everyone.

As a final matter, Mr. Lowder remains hesitant to sign the water users agreement and fully support the new bylaws because they seem to be an attempt to avoid the requirements imposed by the Idaho Rules of Public Drinking Water Systems ("Drinking Water Rules") promulgated as IDAPA 58.01.08. These Drinking Water Rules apply to all "public water systems" pursuant to IDAPA 58.01.08.004.

Under IDAPA 58.01.08.003(29), a "**Drinking Water System**" is defined as: "**All mains, pipes, and structures through which water is obtained and distributed ... actually used or intended for use for the purpose of furnishing water for drinking or general domestic use.**" It seems pretty clear that the water provided by Trout Creek is "used or intended" to be used for drinking and general domestic uses. So, it appears that Trout Creek satisfies this first definition.

Under IDAPA 58.01.08.003(74), a “**Public Drinking Water System**” is defined as:

**A system of the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year.**

This definition is also very easy to understand. It states that Trout Creek must comply with the Drinking Water Rules if it has more than 15 service connections **OR** regularly serves 25 people on a daily basis. Because the word “OR” is use, Trout Creek must comply with these rules if it falls within either of these two conditions. We understand that Trout Creek has at least 30 service connections.

Therefore, it seems very clear to us that Trout Creek must comply with these Drinking Water Rules unless it receives a variance or exemption from the Idaho Department of Environmental Quality (IDEQ). I will be contacting IDEQ to confirm their position on this matter although I’m pretty sure what it will be. If I hear anything, I will let you know. If you have already received a formal variance or exemption, just let us know. The purpose behind these rules is to ensure that water users are receiving clean water. Mr. Lowder’s intent in discussing this with you and IDEQ is the same.

If you have any questions, I can be reached at the telephone number and email address listed above.

Sincerely,



SCOTT J. SMITH

Cc: Brent Lowder