BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 65-23052 AND 65-23053 IN THE NAME OF CROUCH LOG CABINS LLC	**PRELIMINARY ORDER APPROVING APPLICATIONS FOR PERMIT**

PARTIES

On June 6, 2006, "Crouch Log Cabins (Scott Phillips)" filed two applications to appropriate water with the Department of Water Resources ("IDWR" or "Department"). It is not clear from the applications whether the applicant is Crouch Log Cabins LLC, a limited liability company registered to do business in Idaho, or Scott Phillips, a member of Crouch Log Cabins LLC. On one hand, Crouch Log Cabins is the first name listed on the applications, while Scott Phillips is listed second in parentheses, suggesting that Crouch Log Cabins LLC ("Crouch") is the intended applicant. On the other hand, Scott Phillips ("Phillips") signed the applications without providing his title or position with Crouch. Pursuant to Water Appropriation Rule 35.03.b.xiii, for companies the "signator's title shall be shown with the signature." IDWR's regional office staff interpreted the entries on the applications as "Scott Phillips dba Crouch Log Cabins" and issued various orders and notices that way. At the hearing Scott Phillips testified that Crouch is the applicant.

In application no. 65-23052, Crouch proposed to appropriate 0.15 cubic feet per second ("cfs") of water from a spring tributary of Eddy Creek for domestic use in two homes to be located in the NE¼SW¼ of Section 19, T9N, R4E, B.M., in Boise County. In application no. 65-23053, Crouch proposes to appropriate 0.60 cfs of water from Eddy Creek for irrigation, stock watering, domestic use for six homes, irrigation storage, fire protection storage, and stockwater storage purposes on his property located in the SE¼NW¼, NE¼SW¼, and SW¼SE¼ of Section 19, T9N, R4E, B.M., in Boise County. (For brevity, application nos. 65-23052 and 65-23053 may be referred to as "the applications" when they are addressed collectively in this order. When addressed separately, the applications will be identified by application number.)

Zachary Turner, and Craig Allen and Sarah Allen protested application no. 65-23052.

Kathleen Wolff, Zachary Turner, Craig Allen and Sarah Allen, Deborah Gilman, and Pat and Terri Greeson protested application no. 65-23053.

On February 8, 2008, the Department conducted a prehearing conference to review the applications with the applicant and the protestants. Protestants Deborah Gilman and Zachary Turner did not appear at the prehearing conference and did not provide just cause to show why they failed to appear. On March 4, 2008, the Department dismissed the protests filed by Deborah Gilman and Zachary Turner against the applications.

On October 17, 2008, the Department conducted a hearing for the applications. Scott Phillips and Brent Phillips, the members of Crouch, appeared at the hearing with their attorney, William D. Collins. Protestants Pat Greeson and Terri Greeson also appeared at the hearing. Protestants Craig Allen, Sarah Allen, and Kathleen Wolff did not appear at the hearing. On December 2, 2008, the Department issued a *Notice of Proposed Default Order* proposing to dismiss Craig Allen and Sarah Allen as parties to the contested case for application no. 63-23052. Also on December 2, 2008, the Department issued a *Notice of Proposed Default Order* proposing to dismiss Craig Allen, Sarah Allen, and Kathleen Wolff as parties to the contested case for application no. 63-23053.

CASE SUMMARY

Phillips owns approximately 95 acres of land in the Eddy Creek drainage near Garden Valley. He wants to divert water from a spring, which is tributary to Eddy Creek, for domestic use in two homes on his land. In addition, Phillips wants to divert and use water from Eddy Creek for domestic use in four homes, including the two homes that he also wants to supply with spring water, for irrigation of 20 acres, and for storage of water in a five acre-foot off-stream pond for stock watering, irrigation from storage, and fire protection purposes. Phillips's proposed development is located upstream from the Garden Valley Summer Homesites subdivision where all of the original protestants, including Pat and Terri Greeson, own lots. The protestants allege that the water supply in Eddy Creek is not sufficient for the proposed new water uses and that authorizing new water uses from Eddy Creek and/or its tributary springs would reduce the quantity of water available to existing water right holders. The protestants also allege that the proposed water uses are not in the public interest because they would reduce the water available to wildlife enjoyed by local residents.

On October 17, 2008, the Department conducted a hearing for the applications. At the hearing, applicant Scott Phillips was represented by attorney William D. Collins. Protestants Pat and Terri Greeson represented themselves. The following witnesses testified at the hearing:

- Applicant Scott Phillips
- Protestant Pat Greeson

At the hearing, the hearing officer admitted the following items into evidence:

- Exhibit 1 – Record of Survey for Phillips Family Division in Boise County
- Exhibit 2 – USGS aerial imagery and transparent plat overlay
- Exhibit 3 – Subdivision Plat for Garden Valley Home Sites Unit 2
- Exhibit 4 – USGS topographic map
- Exhibit 5 – Flow measurement summary and photographs
- Exhibit 6 – BLM right-of-way letter
- Exhibit 7 – BLM right-of-way grant
- Exhibit 8 – Recommendation of watermaster for application no. 65-23052
- Exhibit 9 – Digital video recording of water measurement locations
- Exhibit 10 – Recommendation of watermaster for application no. 65-23053

- Water right records maintained by the Department for water rights that may be affected by the proposed water uses.

JURISDICTION AND AUTHORITIES

Idaho Code § 42-202 states in pertinent part:

> For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation.

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

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

The applicant bears the ultimate burden of proof regarding all the factors set forth in Idaho Code § 42-203A.

Rule 45.01.c.i of the Department's Water Appropriation Rules (IDAPA 37.03.08.045.01.c.i) states that the application will be found to have been made in good faith if the applicant:

> . . . shall have legal access to the property necessary to construct and operate the proposed project, has the authority to exercise eminent domain authority to obtain

such access, or in the instance of a project diverting water from or conveying water across land in state or federal ownership, has filed all applications for a right-of-way.

ISSUES PRESENTED

Protestants Pat and Terri Greeson assert that Phillips's proposed uses of water is not sufficient for the proposed uses, that it would reduce the quantity of water available under existing water rights, and that the proposed uses of water are not in the local public interest because they would harm wildlife enjoyed by local residents.

FINDINGS OF FACT

1. On June 6, 2006, Crouch Log Cabins LLC filed application to appropriate water nos. 65-23052 and 65-23053 with the Department.

2. In application no. 65-23052, Crouch proposes to appropriate water from a spring tributary to Eddy Creek ("the spring"). The elements of the proposed water use are:

Applicant: Crouch Log Cabins LLC
Priority Date: June 6, 2006
Source and Point of Diversion: Diversion from a spring, tributary to Eddy Creek, located in the NE¼SW¼NW¼, Section 19, Township 9 North, Range 4 East, B.M., Boise County.
Water Use, Quantity, and Season of Use: Domestic 0.15 cfs 01/01 to 12/31
Total Quantity: 0.15 cfs
Place of Use: NE¼SW¼, Section 19, Township 9 North, Range 4 East, B.M., Boise County

3. The proposed water use is within State Water District No. 65 and is subject to control by the watermaster of the water district. The watermaster does not oppose the approval of application no. 65-23052 provided that no water shall be diverted after June 15 of each year without prior approval of the watermaster.

4. The United States Bureau of Land Management ("BLM") owns the property on which the proposed spring source is located. The BLM has offered to the applicant a right-of-way for access to the spring.

5. Phillips owns the property where the proposed use of water will occur.

6. The spring proposed for use in application no. 65-23052 rises to the surface, flows toward Eddy Creek, and then sinks before reaching Eddy Creek. The direction of flow and vegetation pattern between the sinks and Eddy Creek strongly suggest that waters from the spring contribute to the flow of Eddy Creek.

7. The spring discharges approximately five gallons per minute, or between 0.01 cfs and 0.02 cfs, onto the ground surface throughout the year.

8. The diversion rate requested in application no. 65-23052 for the proposed water use is greater than the amount that the Department typically deems to be reasonably necessary for two homes. The Department typically authorizes 0.02 cfs per home for indoor domestic use and 0.02 cfs per home for irrigation of up to ½ acre of land associated with the home. The domestic use proposed in the application is for two homes and irrigation of up to ½ acre of land associated with each home. The Department would typically authorize a total diversion rate of 0.08 cfs for domestic use in two homes with up to ½ acre of irrigation each.

9. IDWR typically authorizes an annual diversion volume of 1.2 acre-feet per home for domestic use. Diverting 1000 gallons per day for 365 days results in an annual diversion of approximately 1.2 acre-feet.

10. The applicant plans to cycle the waters of the spring through a tank that will hold approximately 1000 gallons. If completely depleted, the tank could be refilled by the spring in approximately 3 hours and 20 minutes.

11. In application no. 65-23053, Crouch proposes to appropriate water from Eddy Creek, tributary to South Fork of the Payette River. The elements of the proposed water right permit are:

Applicant: Crouch Log Cabins LLC
Priority Date: June 6, 2006
Source and Point of Diversion: Diversion from Eddy Creek tributary to South Fork Payette River, in the SE¼NE¼NW¼, Section 19, Township 9 North, Range 4 East, B.M., Boise County.
Water Uses, Quantities, and Seasons of Use:

• Domestic	0.18 cfs	01/01 to 12/31
• Stockwater	0.02 cfs	01/01 to 12/31
• Irrigation	0.40 cfs	03/15 to 10/31
• Irrigation from Storage	5.0 af	03/15 to 10/31
• Irrigation Storage	5.0 af	01/01 to 12/31
• Fire Protection Storage	5.0 af	01/01 to 12/31
• Stockwater Storage	5.0 af	01/01 to 12/31

Total Quantity: 0.60 cfs of natural flow and 5.0 af of storage
Place of Use: NE¼SW¼, Section 19, Township 9 North, Range 4 East, B.M., Boise County

12. In the "Remarks" section of application no. 65-23053 Phillips states that the proposed storage use will total 9.0 acre-feet of water annually because 4.0 acre-feet will be lost to evaporation and seepage from the 5.0 acre-foot pond and have to be replenished to keep the pond full.

13. The Phillips Family Division is comprised of four lots. Crouch proposes to establish a domestic water use for four homes, not six. Crouch also proposes to serve two of the proposed four homes with water from the spring in connection with application no. 65-23052.

14. The quantity of water requested for each of the proposed water uses is within the range that the Department typically deems to be reasonably necessary, with exception of the proposed domestic use for four homes. The Department typically authorizes 0.02 cfs per home for indoor domestic use and 0.02 cfs per home for irrigation of up to ½ acre of land associated with the home. Application no. 65-23053 proposes a separate irrigation component and does not include irrigation of up to ½ acre of land associated with each home. The Department would typically authorize a total of 0.08 cfs for in-house domestic use in four homes.

15. The application did not identify a rate for which water will be diverted to storage. A "diversion to storage" use is necessary to describe the diversion of water to an off-stream pond.

16. The proposed water use is within State Water District No. 65 and is subject to control by a watermaster. The watermaster does not oppose the approval of application no. 65-23053 provided that no water shall be diverted after June 15 of each year without prior approval of the watermaster.

17. Phillips owns the property on which the proposed point of diversion from Eddy Creek is located and the property where the use of water proposed in application no. 65-23053 will occur.

18. The following water rights authorize the use of water from Eddy Creek:

Water Right	Basis	Status	Priority Date	Rate(cfs)	Water Use(s)	Owner(s)
65-2831	Decreed	Active	2/21/1966	0.09	DOMESTIC, IRRIGATION	MILLER
65-19988	Decreed	Active	6/28/1934	0.02	STOCKWATER	UNITED STATES
65-12998	Permit	Active	3/21/1989	0.20	DOMESTIC	GARDEN VALLEY SUMMER HOME SITES
65-13621	Permit	Active	6/2/1995	0.50	DOMESTIC, POWER	WOLFF
65-13719	Permit	Active	4/8/1997	0.12	IRRIGATION	WOLFF
65-13981	Permit	Active	10/25/2000	0.04	DOMESTIC	GREESON

19. Water Right no. 65-19988 is an instream stockwater right located upstream from the proposed point of diversion for application no. 65-23053 and upstream from the reach of Eddy Creek affected by the spring source requested in application no. 65-23052.

20. The points of diversion for the Garden Valley Summer Home Sites permit and Kathleen Wolff's two permits are more than one-quarter mile downstream from the point of diversion proposed in application no. 65-23053.

21. The points of diversion for the Miller water right and the Greeson permit are at least three-quarters of a mile downstream from the point of diversion proposed in application no. 65-23053.

22. Eddy Creek is an ephemeral, intermittent stream. Snowmelt and large precipitation events dramatically affect the flows of Eddy Creek. In typical years, Eddy Creek flows to some

extent all year at the upper end of Phillips's property. During the summer when snowmelt runoff has largely passed and precipitation events are infrequent, Eddy Creek flows 0.01 to 0.02 cfs at Phillips's proposed point of diversion for application no. 65-23053 while it is dry or nearly dry at the downstream boundary of Phillips's property. The flows of Eddy Creek at the downstream end of Phillips's property typically decline rapidly around the end of June or first part of July and, except for rare summertime precipitation events, do not resume until more regular precipitation events or snowmelt resume in the late fall, winter, or spring.

23. Phillips has already spent approximately $80,000 to construct roads and powerlines on the property where the proposed use of water will occur. Phillips anticipates it will cost $70,000 to develop the water systems proposed in the applications.

24. On December 3, 2008, the Department mailed a "Notice of Proposed Default Order" by certified mail to protestants Craig Allen and Sarah Allen proposing to dismiss them as parties to the contested for Application no. 65-23052 pursuant to Rule 700 of the Department's Rules of Procedure (IDAPA 37.01.01.700). The notice granted the protestants seven days to file a written petition requesting that a default order not be issued.

25. On December 3, 2008, the Department mailed a "Notice of Proposed Default Order" by certified mail to protestants Craig Allen, Sarah Allen, and Kathleen Wolff proposing to dismiss them as parties to the contested for Application no. 65-23053 pursuant to Rule 700 of the Department's Rules of Procedure (IDAPA 37.01.01.700). The notice granted the protestants seven days to file a written petition requesting that a default order not be issued.

26. Protestants Craig Allen, and Sarah Allen, did not contest the proposed default order for application no. 65-23052.

27. Protestants Kathleen Wolff, Craig Allen, and Sarah Allen, did not contest the proposed default order for application no. 65-23053.

ANALYSIS

Evidence presented by Phillips demonstrates that water in Eddy Creek is available for appropriation during the winter and spring months. The issue in this case is whether the water supply in Eddy Creek is sufficient for the uses proposed by Crouch from mid-summer through the fall, when senior downstream water right holders need water for irrigation. In most years the lower reach of Eddy Creek is dry from the end of June through the fall, except during rare, short-lived precipitation events. The points of diversion for the existing Eddy Creek irrigation rights, including the protestants' water right, are diverted from the lower reach.

In the Payette River drainage, as elsewhere throughout Idaho, a watermaster administers the water rights in the drainage and curtails junior upstream water right diversions, such as Phillips proposes, to satisfy senior downstream water rights, such as the protestants'. In this case, however, Phillips has shown that water often flows at 0.01 to 0.02 cfs at his proposed point of diversion from Eddy Creek while the creek channel is dry downstream. Phillips asserts that his proposed summer and fall diversions from Eddy Creek will not injure downstream senior

right holders because water left in the creek on his land would sink into the ground before reaching the established points of diversion for the senior downstream right holders. Such a set of circumstances is often termed a "futile call."

Because junior and senior water users can disagree about a potential futile call, it is the watermaster's role to determine when it would be futile to curtail an upstream junior water right holder to satisfy downstream senior water rights. Crouch's proposed water uses could be approved subject to regulation of the watermaster of Water District 65, who would either curtail Crouch's diversion to satisfy the downstream senior right holders or, upon determining that curtailment would be futile, allow Crouch to continue diverting.

In evaluating whether a call for water by a senior water right holder is futile, the watermaster often must intensively monitor the diversions and flow rates in the stream over a period of several days. The current base of operations and focus of Water District 65 is far downstream on the Payette River system from Eddy Creek. Until the water district designates a deputy watermaster or some other method from regulating diversions in the Garden Valley area, it may be too expensive and time-consuming for the watermaster to regularly visit Eddy Creek to determine if Crouch should be entitled to divert water. One way to address that issue is for Crouch to compile and provide a set of streamflow data upon which the watermaster can rely to make an informed decision. For that reason, Crouch should be required to compile at least three years worth of flow measurements in Eddy Creek from May through October each year.

Because they do not deplete the supply of water available to satisfy senior water right holders, nonconsumptive water uses usually are not curtailed in times of shortage. The in-house component of Phillips's proposed domestic use on both applications is non-consumptive, as is the proposed stockwater use on application no. 65-23053. These nonconsumptive uses should be allowed even when Crouch's proposed irrigation and diversion to storage uses are curtailed.

Because Eddy Creek already is usually dry through the Garden Valley Summer Home Sites area, the diversion of water proposed in the applications will not harm wildlife in that reach of the Creek and, therefore, is not contrary to the public interest.

CONCLUSIONS OF LAW

Parties

1. Crouch Log Cabins LLC is the applicant for application nos. 65-23052 and 65-23053.

2. Protestants Craig Allen and Sarah Allen should be dismissed from the contested case for application no. 65-23052 pursuant to Rule 702 of the Department's Rules of Procedure (IDAPA 37.01.01.702).

3. Protestants Kathleen Wolff, Craig Allen, and Sarah Allen should be dismissed from the contested case for application no. 65-23053 pursuant to Rule 702 of the Department's Rules of Procedure (IDAPA 37.01.01.702).

Reduction of the quantity of water under existing rights

4. If regulated by the watermaster of Water District No. 65 in accordance with their priorities, the diversions of water proposed in the applications will not reduce the quantity of water available to satisfy existing water rights.

Sufficiency of the water supply for the proposed use

5. The supply of water from the spring source proposed in application no. 65-23052 is about 0.02 cfs which, with the proposed storage tank, is sufficient for domestic use in two homes.

6. The supply of water from Eddy Creek is variable, but is sufficient for the water uses proposed in application no. 65-23053.

Good faith, delay, and speculation

7. Phillips demonstrated good faith by applying to the BLM for access to the spring proposed for development in application no. 65-23052.

8. Phillips filed both applications in good faith without intending to cause delay or speculation.

Financial resources

9. The applicant has sufficient financial resources to complete the project proposed in the application.

Local public interest

10. The water uses proposed in the applications are in the local public interest.

Conservation of water resources

11. To be consistent with the conservation of water resources in Idaho, the diversion rate for domestic purposes in application no. 65-23053 should be limited to 0.08 cfs.

12. The amounts proposed for the other water uses in application no. 65-23053 are consistent with the conservation of water resources in Idaho.

13. The water use proposed in application no. 65-23052 is consistent with the conservation of water resources in Idaho if it is limited to the amount available, which is approximately 0.02 cfs.

Potential adverse affects on the local economy

14. The proposed appropriation of water will not adversely affect the economy of the watershed or local area where the water will be diverted and used.

Overall

15. The Department should approve application no. 65-23052 as provided in Idaho Code § 42-203A subject to conditions necessary for the proper administration of the right.

16. The Department should approve application no. 65-23053 as provided in Idaho Code § 42-203A subject to conditions necessary for the proper administration of the right.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Craig Allen and Sarah Allen are **DISMISSED** as parties to the contested case for application no. 65-23052.

IT IS FURTHER HEREBY ORDERED that Kathleen Wolff, Craig Allen, and Sarah Allen are **DISMISSED** as parties to the contested case for application no. 65-23053.

IT IS FURTHER HEREBY ORDERED that application for permit no. 65-23052 is **APPROVED** and a permit is **GRANTED** for the diversion of 0.02 cfs for domestic purposes subject to the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before **February 1, 2014.**

2. Subject to all prior water rights.

3. Domestic use is for 2 homes.

4. The domestic uses authorized by Rights 65-23052 and 65-23053 shall not exceed a combined total of 4 homes.

5. Place of use is within Lots 1 and 2, Phillips Family Division.

6. The irrigation occurring under this domestic use shall not exceed 1/2 acre within each platted subdivision lot upon which a home has been constructed. This right does not provide for irrigation of common areas or for irrigation of lots upon which homes have not been constructed.

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

8. This right does not grant any right-of-way or easement across the land of another.

9. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 65.

10. The right holder shall construct and maintain the diversion works in such a manner that the diversion of water for the irrigation component of the domestic use can be shut off and locked in the closed position by the watermaster.

11. The right holder shall contact the watermaster by June 15 each year for authorization to continue diverting and using water for irrigation in connection with the authorized domestic use. The right holder shall not divert water for irrigation after June 15 each year unless authorized by the watermaster because:

a. There is sufficient flow of water in Eddy Creek and in the Payette River to satisfy downstream senior water rights, or
b. There is sufficient flow of water in Eddy Creek to satisfy downstream senior water rights and the right holder has rented water from the Payette River Rental Pool or otherwise mitigated for the depletion of water to the Payette River caused by this water use, or
c. The watermaster has determined that curtailing the diversion would not make more water available to senior downstream water right holders due to a futile call. Any futile call determination must be based on a procedure established by the watermaster and the Department.

The department may amend the contact date listed in this administrative provision to more closely coincide with the date when water is not available to fill this water right.

12. The Director retains jurisdiction to limit diversion of water to in-house use permanently.

IT IS FURTHER ORDERED that application for permit no. 65-23053 is **APPROVED** and a permit is **GRANTED** for 0.08 cfs for domestic purposes, 0.40 for irrigation purposes, 0.02 cfs for stockwater purposes, 0.40 cfs for diversion to storage purposes, and 9.0 af for storage for irrigation, fire protection, and stock watering, **for a total of 0.50 cfs,** subject to the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before **February 1, 2014 but not before February 1, 2012.**

2. During calendar years 2009, 2010, and 2011, the right holder shall measure the flow of water in Eddy Creek monthly from May through October, inclusive, at a consistent location at or very near the southern edge of his property while his diversion has been shut off for at least twelve hours. The right holder shall also photograph Eddy Creek at the location of the measurements at the time they are made; record the date, time, and weather conditions; and compile the measurement information and photographs into a log book or report. The log book or report shall be made available to the Department or watermaster on request at any time prior to

the submission of proof of beneficial use and shall be submitted to the Department in connection with the proof of beneficial use.

3. Subject to all prior water rights.

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

5. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 65, Payette River and Tributaries.

6. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

7. The right holder shall contact the watermaster by June 15 each year for authorization to continue diverting and using water for irrigation and diversion to storage. The right holder shall not divert water for irrigation and diversion to storage after June 15 each year unless authorized by the watermaster because:

a. There is sufficient flow of water in Eddy Creek and in the Payette River to satisfy downstream senior water rights, or
b. There is sufficient flow of water in Eddy Creek to satisfy downstream senior water rights and the right holder has rented water from the Payette River Rental Pool or otherwise mitigated for the depletion of water to the Payette River caused by this water use, or
c. The watermaster has determined that curtailing the diversion would not make more water available to senior downstream water right holders due to a futile call. Any futile call determination must be based on a procedure established by the watermaster and the Department.

The department may amend the contact date listed in this administrative provision to more closely coincide with the date when water is not available to fill this water right.

8. Domestic use is for 4 homes. Irrigation of lawn, garden and landscaping associated with the homes is authorized under the irrigation component of this right.

9. The domestic uses authorized by Rights 65-23052 and 65-23053 shall not exceed a combined total of 4 homes.

10. Stockwater use is for 20 head of mixed stock.

11. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

12. Place of use is within Lots 1-4, Phillips Family Division.

13. The right holder shall construct and maintain the diversion works in such a manner that the diversion of water for all but the in-house component of the domestic use and the stockwater use can be shut off and locked in the closed position by the watermaster.

14. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.

15. Water shall not be diverted from storage for fire protection use under this right except to fight or repel an existing fire.

16. Storage use is for a pond that shall not exceed 5 af in capacity. This right authorizes the annual diversion of 5 af of water to fill the pond and 4 af to replenish evaporation losses and seepage losses from the pond.

17. This right does not authorize a continuous flow of water through the pond.

Dated this 5th day of February, 2009.

Shelley Keen

SHELLEY KEEN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 2009, a true and correct copy of the document(s) described below were served by placing a copy of the same in the United States mail, postage prepaid, and properly addressed to the following:

Document(s) Served: Preliminary Order Approving Applications for Permit and Explanatory Information to Accompany a Preliminary Order when a hearing was held

SCOTT PHILLIPS
CROUCH LOG CABINS
17 STONY BROOK
GARDEN VALLEY ID 83622

KATHLEEN WOLFF
2810 CLARK ST
BOISE ID 83705

CRAIG AND SARAH ALLEN
16 FRAZIER CREEK RD
GARDEN VALLEY ID 83622

PAT AND TERRI GREESON
6 FRAZIER CREEK RD
GARDEN VALLEY ID 83622

WILLIAM D COLLINS
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Danni M Smith

Name DANNI M SMITH
Title Office Services Supervisor
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