

# McDevitt & Miller LLP

Lawyers

420 W. Bannock Street

P.O. Box 2564-83701

Boise, Idaho 83702

RECEIVED

2008 NOV 21 PM 3:54

IDAHO PUBLIC  
UTILITIES COMMISSION

Chas. F. McDevitt  
Dean J. (Joe) Miller

(208) 343-7500  
(208) 336-6912 (Fax)

November 21, 2008

## *Via Hand Delivery*

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 W. Washington St.  
Boise, Idaho 83720

Re: Teton Springs Water and Sewer Company, LLC.  
Case No. TTS-W-08-01

Dear Ms. Jewell:

Enclosed for filing in the above matter please find nine (9) copies of the Supplemental Direct Testimony of Jon Pinardi and the Supplemental Direct Testimony of Larry A. Crowley.

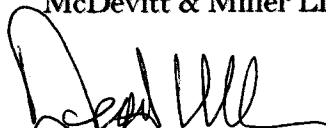
Also enclosed is a computer disc containing the same along with copies of the Testimonies marked "Reporter's Copy."

At the conclusion of the oral argument held on November 7, 2008, it was uncertain whether the Commission desired to convene an evidentiary hearing or to schedule further oral argument subsequent to this filing. We have made this supplemental filing in the form of testimony in the event the Commission desires to convene an evidentiary hearing so that there will be sponsoring witnesses who will be able to respond to any questions the Commission might have.

After an opportunity for review, please advise whether the Commission desires to proceed by evidentiary hearing or oral argument.

Very Truly Yours,

McDevitt & Miller LLP



Dean J. Miller

DJM/hh  
Enclosures  
C: Teton Water and Sewer Company, LLC

ORIGINAL

RECEIVED

2008 NOV 21 PM 3:54

IDAHO PUBLIC UTILITIES COMMISSION

Dean J. Miller (ISB No. 1968)  
McDevitt & Miller LLP  
420 West Bannock Street  
P.O. Box 2564-83701  
Boise, Idaho 83702  
208-343-7500 (T)  
208-336-6912 (F)  
[joe@mcdevitt-miller.com](mailto:joe@mcdevitt-miller.com)

*Attorneys for Teton Springs Water & Sewer Company LLC.*

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION OF )  
TETON SPRINGS WATER AND SEWER )  
COMPANY LLC, FOR THE ISSUANCE OF A )  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY, FOR APPROVAL OF )  
RATES AND CHARGES FOR WATER )  
SERVICE, FOR APPROVAL OF )  
RULES AND REGULATIONS GOVERNING )  
THE RENDERING OF WATER SERVICE. )  
\_\_\_\_\_ )

**Case No. TTS-W-08-01**

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

SUPPLEMENTAL DIRECT TESTIMONY OF JON PINARDI

November 21, 2008

1 Q. Please state your name and occupation.

2

3 A. My name is Jon Pinardi and I am the Manager of Teton Water and Sewer  
4 Company LLC (“Teton Springs”).

5 Q. Are you the same Jon Pinardi who previously filed Direct Testimony in this  
6 matter?

7 A. Yes I am.

8 Q. What is the purpose of your Supplemental Testimony?

9 A. My Supplemental Testimony addresses questions raised by the Commission at the  
10 Oral Argument held on November 7, 2008.

11 **History of the Development**

12 Q. At the November 7<sup>th</sup> Oral Argument, the Commission expressed interest in  
13 understanding more fully the history of the Teton Springs PUD and associated  
14 provision of water service. Please describe the history of the Teton Springs PUD  
15 development.

16 A. The project developer purchased the real property upon which Teton Springs  
17 PUD in 2000. Construction of the project’s infrastructure commenced in 2001  
18 and was substantially completed in 2006; sale of lots within the development  
19 commenced in 2001. In the year 2001, 19 lots out of a total of 601 lots were sold.

20 **Water and Sewer District**

21 Q. What was the developer’s original plan for the provision of water service?

22 A. Originally it was contemplated that water and sewer service would be provided  
23 through a water and sewer district.

1 Q. Please describe the efforts that were undertaken in the formation of a water and  
2 sewer district.

3 A. During the early part of 2006, representatives of the developer worked with  
4 attorney Dale Storer of the law firm Holden, Kidwell, Hahn & Crapo in Idaho  
5 Falls to prepare necessary documents for the creation of a district. In October of  
6 2006, a Petition was filed in district court to authorize an election necessary for  
7 the creation of a district. A hearing was held in January of 2007, and an election  
8 was authorized for May of 2007, the next time at which an election would be  
9 legally scheduled. The election was held on May 22, 2007 and the measure to  
10 create the district was passed. The election results were certified in June of 2007.  
11 In July of 2007 the annual meeting of the Homeowners Association was held. At  
12 this meeting several homeowners objected to the purchase of the system assets by  
13 the district. As a result, the homeowners who had been previously elected to the  
14 district's Board of Directors decided not to pursue any further effort in the face of  
15 determined opposition. The water district was abandoned.

16 Q. Did representatives of the developer communicate with the Commission Staff  
17 during this period of time?

18 A. Yes. Representatives of the developer traveled to Boise in November of 2005 and  
19 in early 2006, and met with the Commission Staff to explain the existence of the  
20 water system and the intent to create a water and sewer district. Mr. Storer kept  
21 the Staff advised on developments by correspondence. Attached to this  
22 Supplement Testimony as Exhibit No. 12, is correspondence from Mr. Storer to  
23 Mr. Scott Woodbury advising of activities related to the district.

1 Q. Have you caused to be prepared a more detail chronology of activities related to  
2 Teton Springs Water and Sewer Company?

3 A. Yes. Attached as Exhibit 13 is a detailed chronology prepared by Mr. Storer  
4 based on a review of his files.

5 Q. Was there ever any attempt to mislead the Staff regarding the status of the water  
6 system and the provision of water service?

7 A. Absolutely not.

8 **IPUC Application**

9 Q. After the effort to create a water and sewer district collapsed, what occurred next?

10 A. Our attorneys then determined that water service could only be legally provided  
11 by a regulated public utility. The Company retained the firm of McDevitt &  
12 Miller in December of 2007 to prepare the Application for Certificate of  
13 Convenience and Necessity and the Company's initial general rate case. At the  
14 same time it retained Mr. Larry Crowley to prepare and file the financial analysis  
15 necessary to support a rate request. The effort required to prepare the financial  
16 analysis was substantial and was completed in May of 2008. The Company's  
17 Application was filed promptly after the analysis was finalized.

18 **Corporate Organization**

19 Q. When was Teton Springs Water and Sewer Company LLC created?

20 A. The Articles of Organization were filed with the Idaho Secretary of State in  
21 August of 2005.

22 Q. Did Teton Springs begin to provide water and sewer service at that time?

- 1 A. No, it did not. It was originally contemplated that the developer LLC would hold  
2 the water and sewer assets pending creation of the water and sewer district and  
3 then transfer the assets to the district. During that period, Teton Springs Water  
4 and Sewer was a legal entity, but it was inactive.
- 5 Q. Please describe the corporate structure of Teton Springs Water and Sewer.
- 6 A. Teton Springs Water and Sewer is a sole member limited liability company. The  
7 sole member of Teton Springs Water and Sewer is Teton Springs Golf and  
8 Casting LLC, the original developer.
- 9 Q. Has Teton Springs Water and Sewer taken the necessary steps to preserve its  
10 corporate identity separate and apart from the developer?
- 11 A. Yes. There is a formal Operating Agreement, which is attached as Exhibit 14 and  
12 which is required by the Idaho Limited Liability Act. Teton Springs Water and  
13 Sewer has filed the necessary Annual Reports to the Idaho Secretary of State in  
14 each year of its existence. Teton Springs Water and Sewer has separate bank  
15 accounts and there is no commingling of funds with Teton Springs Golf and  
16 Casting.
- 17 Q. Is there also a Homeowner's Association (HOA) within the development?
- 18 A. Yes. The Homeowner's Association is a separate corporation, Teton Springs  
19 Homeowner's Association, Inc., an Idaho Corporation.
- 20 Q. Does the developer have any continuing interest in the HOA?
- 21 A. No. The developer conveyed control of the HOA to an independently elected  
22 Board of Directors in 2007. There currently is no relationship between the  
23 developer and the HOA, other than the fact that I serve on the HOA Executive

1 Board. I was nominated by the property owners, not the developer, and elected at  
2 the annual meeting in 2008 to serve a 3 year term.

3 Q. What is the relationship, if any, between Teton Springs Water and Sewer and the  
4 HOA?

5 A. None, other than the HOA Restrictive Covenants specify that private wells and  
6 septic systems are not permitted and the property owners must connect to the  
7 Teton Springs Water and Sewer Company.

8 **Provision of Water Service Prior to IPUC Application**

9 Q. From the time that the Teton Springs PUD commenced operations up to the time  
10 the Company's Application was filed with the Commission, please explain how  
11 water service was provided.

12 A. In the early phase of operation, following inception in 2001, the water system  
13 assets were still held within the development company and water service was  
14 provided by that company. I was hired in January of 2006. Because of my  
15 experience in operating water and sewer systems within resort communities, one  
16 of my first tasks was to begin to separate the water and sewer operations from the  
17 development operations and to create a system of accounts that would track water  
18 revenue and expense separately from the development operations. We also  
19 retained the engineering firm CH2MHILL to conduct a system appraisal and rate  
20 study that would have supported rates to be charged by the water and sewer  
21 district.

22 Q. What were the rates for water service during the early phase of operation?

1 A. The initial rate was a flat \$180 billed and paid quarterly for water and sewer  
2 combined.

3 Q. Were those rates sufficient to cover operating costs?

4 A. During the early phase of operation financial records were not maintained in a  
5 way that would permit a meaningful profit and loss accounting. However, our  
6 records indicate that by the end of 2004 there were 7 customers and by the end of  
7 2005 there were 46 customers. It is a certainty that the revenue from such a small  
8 number of customers was far below the expense of providing service.

9 Q. Were the rates for water service subsequently adjusted?

10 A. Yes. In September of 2006, a new rate structure was adopted. Those rates were  
11 a flat \$240 rate billed and paid quarterly for water service.

12 Q. Do you believe the development company profited from the provision of water  
13 service?

14 A. I am confident it did not. As noted, during the early phase, rates were very low  
15 and there were a very small number of customers. Even after rates were adjusted  
16 in 2006 the Company operated at a loss. For the test year 2007, Mr. Crowley  
17 calculated a revenue deficiency of \$99,256. (*See Direct Testimony of Larry A.*  
18 *Crowley, May 20, 2008).*

19 **Teton Springs Water and Sewer Transactions with Developer**

20 Q. At the Oral Argument the Company indicated that at the time of the asset transfer  
21 there was not consideration paid to the development company. Do you believe  
22 that to be unusual or improper?



1 A. No. The transfer was a transfer between a parent company and a wholly owned  
2 subsidiary company. In such transactions it is common that there is no  
3 consideration. Additionally, a payment of consideration could have triggered a  
4 tax liability for the parent. Further, our attorneys advised us it was unlikely that  
5 the Commission would have allowed a return on any sums paid in consideration  
6 of the transfer. In such circumstances there was no logic to support payment of a  
7 compensation for the transfer. The transfer documents are attached to this  
8 Supplemental Direct Testimony as Exhibit 15.

9 Q. At the Oral Argument the Staff attorney suggested that Teton Springs is a shell  
10 corporation. (Tr. Pg. 43). Is it fair to characterize Teton Springs as a “shell” or  
11 “phantom” corporation?

12 A. Absolutely not. That description is extremely misleading.

13 Q. Please explain.

14 A. In the business world the phrase “shell corporation” refers to a corporation that  
15 exists on paper but does not have any significant assets or business operations. In  
16 some cases a shell corporation may have a legitimate purpose as an investment  
17 vehicle or tax shelter; in other cases shell corporations may be sham corporations  
18 with no legitimate business purpose.

19 In contrast, Teton Springs owns assets with a replacement cost of  
20 approximately six million dollars. It has active business operations. Teton  
21 Springs is not in any sense a shell or phantom corporation. And, as noted above,  
22 Teton Springs Water and Sewer has preserved its independent corporate identity.

1 Q. At the Oral Argument the Staff attorney further suggested that the development  
2 company should have “disgorged some of its profits” to establish a sinking fund.  
3 (Tr. Pg 43). What is your reaction to that suggestion?

4 A. I have several. First, this suggestion was not contained in Staff’s written  
5 Comments. It appears to have occurred to the Staff attorney as he was speaking,  
6 without thoughtful consultation with the Staff.

7 Second, Teton Springs has always acknowledged that the cost of the water  
8 system infrastructure was recovered in sales of lots by the developer and that  
9 following transfer to Teton Springs the system assets retained their character as  
10 contributed property. Teton Springs has not attempted to conceal, distort or  
11 misrepresent this fact. It has not attempted to invent a rate base when none  
12 existed. Because lot owners have, in effect, paid for the system assets through lot  
13 purchases it would be inappropriate for Teton Springs to recover the cost of the  
14 assets again from water customers. Accordingly, Teton Springs has not requested  
15 a return investment in system assets in its rates.

16 What Teton Springs has requested is an expense element in rates, which  
17 we have labeled an amortization expense, which would allow for the orderly  
18 maintenance, repair and replacement of the systems assets. It is fair and logical  
19 that customers, not the developer, have the cost responsibility for maintenance,  
20 repair and replacement of system assets because it is the customers, not the  
21 developer, that benefit from the existence and operation of the water system  
22 assets.

1 Further, the phrase “disgorge profits” implies there are some past profits to  
2 give back. As discussed above, the water system has never operated at a profit.

3 Finally, the phrase “disgorge profits” implies some form of wrong doing by  
4 either Teton Springs or its owner. Throughout this case, from the initial  
5 Application, to cooperation with the Staff audit, to the Company’s Reply  
6 Comments and this Supplemental Testimony, Teton Springs has been  
7 forthcoming in disclosing all relevant information. The Staff audit did not reveal  
8 impropriety of any nature.

9 Q. In a similar vein, at Oral Argument a question was raised as to whether customers  
10 have acquired some form of equitable interest in the system assets. Do you have  
11 an opinion?

12 A. Except in narrow circumstances, I do not believe that utility customers become  
13 equitable owners of utility assets by virtue of paying rates, any more than  
14 customers of Chevron Oil become, in effect, shareholders by purchasing gasoline  
15 at the pump.

16 **Need for Amortization Expense Allowance and Reserve for Repairs**

17 Q. At the Oral Argument the Staff Attorney observed that the water system is well  
18 designed and constructed and is relatively new, implying there is not a need for a  
19 reserve for repairs. (Tr. Pg. 25). Does that correctly describe the circumstance?

20 A. Although the system is about five years old, the need for repairs still arises. For  
21 example, in the four month period from December 2006 through March 2007 the  
22 Company incurred the following expense for repairs, totaling \$24,944, as  
23 reflected by invoices from our repair contractor:

- 1           ▪ 12/18/06:     \$16,545: Repair mainline where a thrust block failed;
- 2           ▪ 1/25/07:     \$1,890: Locate, expose and repair curb stop;
- 3           ▪ 2/9/07:       \$5,909: Repair broken mainline;
- 4           ▪ 3/7/07:       \$600: Repair broken line at a curb stop.

5           Fortunately, since that time repairs have been minimal, but this serves to show  
6           that at any particular time unexpected repair expense can be significant.

7   Q.     Would the revenues produced by the rates proposed by Staff have been sufficient  
8           to pay repair expense incurred between December 2006 and March 2007?

9   A.     No they would not.

10   Q.    Could repairs of the nature as were necessary during that period of time have  
11           been deferred while the Company applied to the Commission for an emergency  
12           surcharge?

13   A.    No. A public drinking water system is obligated to provide continuous service  
14           and does not have the luxury of waiting to make system repairs.

15   Q.    Does the climate of the region in which the Teton Springs is located pose special  
16           challenges?

17   A.    Yes. The winter climate conditions are harsh. For example, during the months of  
18           January and February the average minimum temperature is 7.5 degrees and the  
19           average snow depth is 13 inches. Temperatures of 40 degrees below zero have  
20           been recorded. This creates stress on the system and complicates repairs during  
21           the winter months. To illustrate, attached to this Supplemental Testimony as  
22           Exhibit No. 16, are photographs depicting the weather conditions in December of  
23           2006 when repair of a mainline was necessary.

1 Q. Does that conclude your testimony?

2 A. Yes it does.

Law Offices  
**HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.**

KENT W. FOSTER  
ROBERT E. FARNAM  
WILLIAM D. FALER  
CHARLES A. HOMER  
GARY L. MEIKLE  
DONALD L. HARRIS  
DALE W. STORER  
FREDERICK J. HAHN, III\*  
KARL R. DECKER  
SHAN B. PERRY  
DEANNE CASPERSON\*\*  
AMELIA A. SHEETS  
ROBERT L. HARRIS

\*Also licensed in Wyoming

\*\*Also licensed in Missouri and Kansas

1000 RIVERWALK DRIVE, SUITE 200  
P.O. BOX 50130  
IDAHO FALLS, IDAHO 83405

-----  
TELEPHONE (208) 523-0620  
FACSIMILE (208) 523-9518  
E-MAIL [DSTORER@HOLDENLEGAL.COM](mailto:dstorer@holdenlegal.com)

Arthur W. Holden  
(1877-1967)  
Robert B. Holden  
(1911-1971)  
Terry L. Crapo  
(1939-1982)  
William S. Holden  
(1907-1988)

-----  
Of Counsel  
Fred J. Hahn  
Marie T. Tyler

August 28, 2007

Scott Woodbury  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, Idaho 83720-0074

Re: *Teton Springs PUD*

Dear Scott:

In furtherance of my earlier correspondence with you regarding the above-referenced matter, the following is a status report of our efforts to form a water district for the purpose of operating the Teton Springs water and sewer utilities.

As reported to you earlier, we were successful in forming a water district and establishing a Board of Directors to operate the same. Recently, at a very contentious meeting of the Homeowners Association, the property owners voted to discontinue efforts to transfer the assets of the system to the District and directed the Board of Directors to dissolve the District. Needless to say, my clients were disappointed with that turn of events, however they certainly respect the wishes of the home owners.

Accordingly, we will be moving forward with "Plan A" which involves the filing of an application for a certificate of convenience with the IPUC. We have instructed our consultant, CH2M Hill to dust off their previous rate study and update it into a condition that could be presented in conjunction with that Petition. As soon as that update is completed we will then move forward with the filing of the necessary application.

Should you have any questions, please feel free to call.

Very truly yours,

Dale W. Storer  
Attorney at Law

cc: Jon Pinardi  
Tony Vest  
David Blanksma

Law Offices  
**HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.**

KENT W. FOSTER  
ROBERT E. FARNAM  
WILLIAM D. FALER  
CHARLES A. HOMER  
GARY L. MEIKLE  
DONALD L. HARRIS  
DALE W. STORER  
MARIE T. TYLER  
FREDERICK J. HAHN, III  
KARL R. DECKER  
SHAN B. PERRY  
DEANNE CASPERSON\*\*  
AMELIA A. SHEETS  
ROBERT L. HARRIS  
DEBORAH S. O'MALLEY

\*\*Also licensed in Missouri and Kansas

1000 RIVERWALK DRIVE, SUITE 200  
P.O. BOX 50130  
IDAHO FALLS, IDAHO 83405

-----  
TELEPHONE (208) 523-0620  
FACSIMILE (208) 523-9518  
E-MAIL [DSTORER@HOLDENLEGAL.COM](mailto:dstorer@holdenlegal.com)

Arthur W. Holden  
(1877-1967)  
Robert B. Holden  
(1911-1971)  
Terry L. Crapo  
(1939-1982)  
William S. Holden  
(1907-1988)

-----  
Of Counsel  
Fred J. Hahn

September 29, 2006

Scott Woodbury  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, Idaho 83720-0074

Re: *Teton Springs PUD*

Dear Scott:

In furtherance of our earlier conversation regarding the Teton Springs Resort development near Victor, Idaho, I am enclosing a copy of a Petition I have prepared in behalf of my client, Teton Springs. As you will note, the Petition requests the formation of a water and sewer district for the purpose of providing water and sewer services to the residents of the Teton Springs PUD. My clients are now soliciting the necessary signatures and we anticipate the Petition will be filed with the District Court of Teton County within the next three to four weeks. As you requested, I will keep you posted of the progress of that effort and the eventual outcome thereof.

If you need further information concerning the project you may wish to visit with Joe Leckie or C.J. Cooper. We have met with them several times and have provided them with considerable information about the project.

Should you have further questions, please feel free to call.

Very truly yours,

Dale W. Storer

Enclosure

cc: Dave Blanksma

G:\WPDATA\DWS\2787.02 - Teton Springs\Creation of Water District\Woodbury 092906.ltr.wpd

Law Offices  
**HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.**

KENT W. FOSTER  
ROBERT E. FARNAM  
WILLIAM D. FALER  
CHARLES A. HOMER  
GARY L. MEIKLE  
DONALD L. HARRIS  
DALE W. STORER  
MARIE T. TYLER  
FREDERICK J. HAHN, III  
KARL R. DECKER  
SHAN B. PERRY  
DEANNE CASPERSON\*\*  
AMELIA A. SHEETS  
ROBERT L. HARRIS  
DEBORAH S. O'MALLEY

\*\*Also licensed in Missouri and Kansas

1000 RIVERWALK DRIVE, SUITE 200  
P.O. BOX 50130  
IDAHO FALLS, IDAHO 83405

-----  
TELEPHONE (208) 523-0620  
FACSIMILE (208) 523-9518  
E-MAIL [DSTORER@HOLDENLEGAL.COM](mailto:DSTORER@HOLDENLEGAL.COM)

Arthur W. Holden  
(1877-1967)  
Robert B. Holden  
(1911-1971)  
Terry L. Crapo  
(1939-1982)  
William S. Holden  
(1907-1988)

-----  
Of Counsel  
Fred J. Hahn

November 29, 2006

Scott Woodbury  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, Idaho 83720-0074

Re: *Teton Springs PUD*

Dear Scott:

By way of a further update regarding the above-referenced matter, this will advise you that I have filed a Petition on behalf of Teton Springs requesting the formation of water and sewer district with the District Court in Teton County, Idaho. I am awaiting the court's issuance of an order setting the matter for hearing at which time the court will establish a date and time for an election, assuming it finds the Petition is in proper form and order.

As noted in my earlier correspondence, I will keep you apprised of the progress of this effort. In the interim, should you have any questions please feel free to call.

Very truly yours,

Dale W. Storer  
Attorney at Law

cc: David Blanksma

G:\WPDATA\DW\2787.02 - Teton Springs Water & Sewer Co., LLC - General\Water District\District Formation Petition - Teton Co\Woodbury 112906.ltr.wpd:sm



**CHRONOLOGY  
TETON SPRINGS WATER AND SEWER COMPANY**

Date	Event
June, 2005	Tony Vest signs Teton Springs Water and Sewer Company, LLC, Operating Agreement
August 8, 2005	Articles of Organization filed with Secretary of State
September 21, 2005	CH2M Hill submits scope of work proposal for water and sewer rate study
September 29, 2005	Teton Springs Water & Sewer Company commissions CH2M Hill to perform rate study and appraisal
October 5, 2005	Storer contacts Leckie concerning possibility of meeting with IPUC staff.
October 14, 2005	Storer forwards marketing brochure and information packet to Joe Leckie regarding Teton Springs PUD
October 14, 2005	Storer emails Mr. Leckie letter soliciting meeting with IPUC staff
October 25, 2005	Storer discusses possible IPUC staff meeting dates with Leckie
November 16, 2005	Blanksma, Storer, CH2M Hill meet with IPUC staff to discuss the status of operations and intent to form District
Spring, 2006 (?) <sup>1</sup>	Teton Springs and CH2M Hill meet with IPUC staff a second time
August 16, 2006	Storer discusses need for temporary operating certificate with Scott Woodbury. Woodbury advises that operating informally w/o certificate is okay with IPUC as long as moving forward with District organization. Woodbury asks to be kept advised of progress.
September 15, 2006 <sup>2</sup>	Storer forwards draft copy of Petition seeking formation of Water/Sewer District to Woodbury
October 18, 2006	Pinardi sends letter to residents soliciting signatures on Petition for Formation of Water and Sewer District
November 7, 2006	Storer verbally apprises Woodbury of status of District

<sup>1</sup>I'm unsure of this date because I was not directly involved in the meeting.

<sup>2</sup>Between September 2005, and September 2006, CH2M Hill was working on the rate study and appraisal of the system assets. Teton Springs did not wish to move forward with formation of the District until the rate study was completed.

November 13, 2006	Petition for Organization of Water/Sewer District filed with District Court, Teton County, CV-06-360
November 20, 2006	Request for hearing filed with the Court
November 29, 2006	Storer sends letter advising Woodbury of filing of Petition
December 14, 2006	Court signs Order setting hearing date on Petition
January 22, 2007	Nominations for Board of Directors filed
January 23, 2007	Hearing on Petition held
February 5, 2007	Court signs order calling for election on May 22, 2007 <sup>3</sup>
February 27, 2007	CH2M Hill completes appraisal of system assets
March, 2007	Teton Springs files action against Victor seeking to correct erroneous sewer rate under Sewer User Agreement.
May 9, 2007	Additional nominations filed for Board of Directors
May 22, 2007	Election conducted. Majority of home owners approve formation of Water/Sewer District; Board of Directors elected
June 8, 2007	Court signs Order establishing Water/Sewer District
June 13, 2007	Water/Sewer District purchases policy of liability insurance
July 25, 2007	Victor passes ordinance annexing entire PUD. The annexation was later invalidated by the District Court on January 30, 2008.
July 30, 2007	HOA meets and decides not to proceed with purchase of assets from Teton Springs Golf & Casting Club
August 28, 2007	Storer advises Woodbury of HOA's decision to terminate negotiations for sale of assets to District and of Teton Springs' intent to pursue IPUC application
December, 2007	Teton Springs retains McDevitt-Miller to prepare IPUC application
May 6, 2008	Bill of Sale, Warranty Deed, Indemnity Agreement signed transferring assets from Teton Springs Golf & Casting to Teton Springs Water and Sewer <sup>4</sup>

<sup>3</sup>The hearing date was delayed beyond the February election date because the Clerk of the Court failed to timely forward the proposed Order to the Court for signature. This delayed the election by four months.

<sup>4</sup>Until the District concept was abandoned, the intent was to transfer the system assets directly from Teton Springs Golf & Casting, LLC to the District, rather than capitalizing the Water and Sewer Company.

**OPERATING AGREEMENT**

of

**Teton Springs Water and Sewer Company, LLC**

This Operating Agreement of Teton Springs Water and Sewer Company, LLC, a limited liability company organized pursuant to the Act, is entered into and shall be effective as of the Effective Date, by and between the Company and Teton Springs Golf and Casting Club, LLC, whose address is 1 Teton Springs Parkway, Victor, Idaho, 83455, hereinafter referred to as "Initial Member".

## **ARTICLE I FORMATION**

**1.1 Organization.** The Initial Member hereby organizes the Company as an Idaho limited liability company pursuant to the provisions of the Act.

**1.2 Name.** The name of the Company is Teton Springs Water and Sewer Company, LLC, and all business of the Company shall be conducted under that name.

**1.3 Effective Date.** This Agreement shall be effective upon the later of July 1, 2005, or the filing of the Articles with the Idaho Secretary of State.

**1.4 Term.** The Company shall be dissolved and its affairs wound up in accordance with the Act or this Agreement.

**1.5 Registered Agent and Office.** The registered agent for the service of process and the registered office shall be that person and location reflected in the Articles as filed in the office of the Secretary of State. The registered officer or agent may be changed by indicating the change on the annual report prescribed by the Act or by delivering to the Secretary of State the Statement of Change of Registered Agent meeting the requirements of the Act.

**1.6 Nature of Business.** The Company is created to for the purpose of providing domestic and commercial water and sewer services to the owners, occupants, lessees and invitees of the Teton Springs Golf and Fishing Resort, located in Teton County, Idaho. The Company shall also have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this Agreement.

## **ARTICLE II DEFINITIONS**

For purposes of this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

**Act.** The Idaho Limited Liability Company Act and all amendments to the Act.

**Agreement.** This Operating Agreement including all amendments adopted in accordance herewith and the Act.

**Articles.** The Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Secretary of State.

**Assignee.** A person to whom one or more Units has been transferred but who has not been admitted as a Member. An Assignee is treated as a Member for the limited purposes specified under the definition of Member.

**Capital Account.** The account maintained for a Member or Assignee determined in accordance with Article III.

**Capital Contribution.** Any contribution of Property, services or the obligation to contribute Property or services made by or on behalf of a Member or Assignee.

**Code.** The Internal Revenue Code of 1986 as amended from time to time.

**Company.** Teton Springs Water and Sewer Company, LLC, a limited liability company formed under the Act, and any successor limited liability company.

**Company Liability.** Any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

**Company Property.** Any Property owned by the Company.

**Consent of the Members.** Consent of the Members requires that Members holding a majority of the Units entitled to vote consent to or approve a particular matter, unless the applicable provision of this Agreement specifically requires the unanimous agreement of all Members. Assignees shall not be considered Members with Units entitled to vote for the purpose of determining Consent of the Members.

**Disposition (Dispose).** Any sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation, or other transfer, absolute or as security or encumbrance (including but not limited to Dispositions by operation of law).

**Dissociation.** Any action which causes a person to cease to be Member as described in Article X of this Agreement.

**Distribution (Distribute).** A transfer of Property to a Member on account of Units as described in Article VI.

**Initial Capital Contribution.** The Capital Contribution agreed to be made by the Initial Members as described in Article III.

**Initial Members.** Those persons identified on Exhibit "A" attached hereto and made a part of this Agreement by this reference who have executed this Agreement.

**Losses.** The losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

**Management Right.** The right of a Member to participate in the management of the Company, including the right to consent to or approve actions of the Company. Every Member may vote his or her Units on any issue subject to a vote of the Members, except the Seller's Units shall be ignored for all votes under Section 8.1.

**Manager.** The Manager shall mean Teton Springs Golf and Casting Club, LLC and any other persons or entities that succeed the Manager(s) in that capacity. References to the Manager in the singular or as him, her, it, itself or other like references shall also include the plural or the masculine or feminine reference as the case may be.

**Member.** A person who holds Units and who also has the right to exercise the Management Rights attributable to those Units by reason of being (i) an Initial Member, or (ii) admitted as a Member pursuant to Article IX. An Assignee is treated as a Member for the limited purposes of accounting, taxation and Distributions, whether or not specifically referred to in those sections of this Agreement dealing with such matters. The treatment of an Assignee as a Member for such limited purposes does not confer upon the Assignee any rights to vote or to participate in management of the Company.

**Profits.** The income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

**Property.** Any property real or personal, tangible or intangible, including money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

**Regulations.** Except where the context indicates otherwise, the permanent, temporary, and proposed regulations of Department of the Treasury under the Code as such regulations may be lawfully changed from time to time.

**Remaining Members.** In the event of Dissociation of a Member, all of the Members at the time of such Dissociation other than the Member who is Dissociated. In the event of a Member who has any potential conflict of interest or transaction between the Member and the Company, the Members not having the potential conflict of interest or transaction. In the event of a Disposition of Units, the Members not Disposing of their Units.

**Sharing Ratio.** With respect to any Member or Assignee, a fraction (expressed as a percentage), the numerator of which is the total of such person's Units and the denominator is the total of all Units of all Members and Assignees.

**Taxable Year.** The taxable year of the Company as determined pursuant to §706 of the Code.

**Taxing Jurisdiction.** Any state, local, or foreign government that collects tax, interest or penalties, however designated, on any Member's share of the income or gain attributable to the Company.

**Units.** Ownership rights of a Member of the Company as further set forth in Article III.

### **ARTICLE III CONTRIBUTIONS, UNITS AND CAPITAL ACCOUNTS**

**3.1. Units.** Ownership rights in the Company are reflected in Units. Each Unit has the following described rights.

3.1.1. Each Unit held by a Member has equal Management Rights with every other Unit held by Members and in matters subject to a vote of Members has one vote.

3.1.2. Each Unit has equal rights with every other Unit with respect to the sharing of Profits and Losses and with respect to Distributions.

**3.2. Initial Capital Contributions.** The name, address, description and value of the Initial Capital Contributions, and number of Units issued to each Initial Member are as set forth in the attached Exhibit "A".

**3.3. Disposition of Units.** No Member may Dispose of Units except as provided in this Agreement. Any such Disposition results in the Disposition of the rights in Profits and Losses and the rights in the Capital Account attributable to the Units, but no rights to vote unless the Assignee becomes a Member.

