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DEPARTMENT OF
WATER RESOURCES

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re: SRBA

Case No. 39576

)
) Subcase Nos. 63-00123D, 63-00123F & 63-
) 00123G
)
) **LEXINGTON HILLS HOMEOWNERS'**
) **ASSOCIATION'S MOTION TO ALTER OR**
) **AMEND**
)
)

COMES NOW, Lexington Hills Homeowners' Association ("LHOA"), by and through its attorneys of record, Barker Rosholt & Simpson, LLP, and moves this Court, pursuant to AO1 13, and this Court's *Order Extending Deadline for Filing Motions to Alter or Amend*, dated January 28, 2009, for an order altering or amending the December 11, 2008, *Special Matters Report and Recommendation* (SR&R), issued in the above subcases.

INTRODUCTION

The purpose of the SRBA is to provide a "comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water" in the Snake River Basin, in Idaho. *See* I.C. § 42-1406A. Indeed, the goal of the SRBA is to provide water users with "as high a degree of certainty as possible with respect to their water rights." *See LHOA*

Proposed Findings of Facts & Conclusions of Law (citing Legislative Committee Report). The *SR&R*, however, does not provide LHOA with an accurate determination of its right or the certainty demanded with a decreed water right.

Before the Court are three *Objections* to the above surface water rights filed by LHOA. LHOA claimed all water under the Jacobs water right associated with the underlying properties. Lexington Hills, Inc. (“INC”) claimed 1.93 cfs and East Hills claimed 0.5246 cfs. While, LHOA objected to the Department’s recommendations to the above water rights, neither INC nor East Hills filed an objection or response. The Special Master determined that East Hills did not have any ownership interest in the water and recommended that the East Hills claim be disallowed. *See SR&R 13.*

The issues raised by the LHOA’s objections deal with the ownership of the water rights, the total irrigated acres, the duty of water and any conditions that must be included on the water rights. In a preliminary ruling on cross motions for summary judgment, the Special Master determined that INC retained ownership of a portion of the Jacobs water right. That decision, however, was made without the benefit of information that was subsequently discovered relative to groundwater permit 63-11143 – where INC¹ agreed to keep all surface water on the subdivision lands. This new information conflicts with the testimony in the affidavit of David Roylance, upon which the Special Master relied in making the ownership decision.

The *SR&R* determined the total irrigated acres to be 170 acres. This determination is based on the flawed analysis of SPF Water Engineers, LLC, which, admittedly, failed to account for all irrigated acres within the place of use. LHOA’s analysis, however, is based on the analysis of INC’s own expert and recognizes that the irrigated acres should be 182.9 acres.

¹ INC’s predecessor in interest is Floating Feather Hills, Inc.

All parties agree that LHOA could beneficially use more than 1 inch per acre – up to 1.13 inches per acre. However, this agreement among the parties was overlooked. Finally, the condition placed on groundwater permit 63-11143 by IDWR make clear that any attempt to transfer the surface water “will” cause the Department to “further limit” the use of the groundwater permit. While the nature and extent of any future limitations is unknown, there is no question that a transfer “will” cause limitations. The recommended condition in the *SR&R* fails to adequately protect the interests of LHOA in light of this undisputed fact. Accordingly, the *SR&R* should be altered or amended.

ARGUMENT

I. The Circumstances Surrounding the Execution of the Covenants, Conditions and Restrictions and the Resolution of Protests to Groundwater Permit 63-11143 Demonstrate that LHOA Should Own all of the Jacobs Water Right.

On April 18, 2007, the Court issued its *Memorandum Decision & Order on Cross Motions for Summary Judgment & Order Setting Scheduling Conference* (“*Summary Judgment Order*”), addressing the ownership of the above water rights. *See SR&R* at 2. That decision determined that the CC&R’s were not ambiguous and expressed a clear intent by INC to withhold ownership of some portion of the surface water. That decision relied heavily on the Declaration of Covenants Conditions and Restrictions (CC&R’s) and the circumstances surrounding their creation, as well as and the *Affidavit of David Roylance* (“*Roylance Aff.*”). Since that time, however, information has been discovered that contradicts the testimony in Mr. Roylance’s affidavit and shows that all of the surface water should have been transferred to LHOA. Since the Special Master did not have this information – relating to the resolution of protests to groundwater permit 63-11143 – the *Summary Judgment Order* should be reconsidered.

The new relevant facts are as follows:

1. Mr. Roylance was one of the initial Board members for LHOA, beginning in 1992. As a LHOA Board member, Mr. Roylance was obligated to protect LHOA's interests. At that time, he was also a "partner" or had some financial interest in INC. As Mr. Roylance stated in his affidavit filed in the Summary Judgment proceedings, he has been involved in "all aspects of the development of the subdivision." *Roylance Aff.* ¶ 3.

2. In early 1990's, Mr. Roylance was involved in the permitting process for groundwater permit 63-11143. He took actions in an attempt to ensure that the development retained a sufficient and adequate water supply.

3. Protests were filed on the application for groundwater permit. Mr. Roylance participated in the resolution of those protests and testified on behalf of the *developer* (INC) in the subsequent hearing.

4. As a settlement to the protests filed against the application for the groundwater permit, INC agreed to keep all appurtenant surface water rights on the subdivision property. In fact, during that hearing, Mr. Roylance, and INC's then legal counsel, repeatedly testified that INC would leave all of the surface water on the subdivision lands.

5. In light of INC's and Mr. Roylance's promise, groundwater permit 63-11143 was approved with a condition that prohibits the transfer of all appurtenant surface water from the subdivision lands – stating that any attempt to transfer the appurtenant surface water "will" result in "limitations" to the use of groundwater permit 63-11143.

6. Neither Mr. Roylance nor INC appealed the groundwater permit approval.

Upon reviewing this information, the Special Master determined that the settlement reached in the permitting process and the resulting condition placed on groundwater permit 63-11143 *impacts the surface water rights* subject to this proceeding. *See SR&R 12-13.*

During the summary judgment proceedings, Mr. Roylance testified, through his affidavit, that INC had never intended to keep all the surface water on the land but that it only intended to transfer “sufficient water rights” to LHOA – as determined by INC. *Roylance Aff.* ¶ 6. He testified that the CC&R’s were drafted with the intent that INC would retain some of the water. *Id.* ¶¶ 5-6. Specifically, he asserted that INC “did not intend to convey all of its water rights to the Association [LHOA].” *Id.* ¶ 5. He testified that INC would retain the remaining water. *Id.* By retaining the water, INC would then be able to transfer the surface water away from the subdivision lands. This testimony regarding the intent of the CC&R’s is directly at odds with Mr. Roylance’s and INC’s, prior commitment to keep the surface water appurtenant to the subdivision.

In fact, during the hearing on protests to the ground water permit, prior counsel for INC, Phil Barber, specifically confirmed that INC “will agree therefore not to sell or transfer the Farmers Union irrigation water right [i.e. the Jacobs water] off of the property, which is the place of beneficial use in this application.”² He further testified that “the bottom line is we will not strip the surface water, irrigation water, from these lands and *we are willing to make a commitment that can be a condition that we will not transfer those surface rights away from*

² A portion of the transcript of proceedings from the *Hearing to Receive Evidence and Testimony in Connection with Protested Application for Permit No. 63-11413 in the name of Floating Feather Hills, Inc. and Treasure Valley Village before Glen Saxton, Hearing Officer* was submitted as an exhibit by LHOA during the hearing. A copy of that transcript is attached hereto for the Court’s convenience.

these lands.” (Emphasis added). Following these representations, the following dialogue between Mr. Barber and Mr. Roylance demonstrates that Mr. Roylance knew the surface water would remain on the subdivision lands:

MR. BARBER: You heard my prior commitment that you would not transfer or sell surface irrigation water off the project?

MR. ROYLANCE: That’s right. We have no desire or need to sell the water, we *want to use as much of the water as we feasibly can on the project both to recharge the aquifer and to keep it green.*

Id. (emphasis added).

In light of his shifting opinions and promises, Mr. Roylance’s affidavit cannot be relied upon. However, the *Summary Judgment Order* determined that even without Mr. Roylance’s testimony, the intent of the CC&R’s is clear. The Court recognized that “the intention of the parties can be ascertained through an analysis of the instrument itself, from the circumstances attending and leading up to its execution, from the subject matter, and from the situation of the parties at the time.” *Summary Judgment Order* at 8 (citing *Benninger v. Derifield*, 142 Idaho 486, 489 (2006)). The Special Master reviewed the circumstances surrounding the creation of the CC&R’s and determined that

Accordingly, it would not have made sense for Lexington Hills [INC] to simply convey the entire Jacobs water right to the Lexington HOA upon its inception. To the contrary, the scheme of the Master Declaration [CC&R’s], and *the circumstances leading up to its execution*, indicate that Lexington Hills [INC] intended to reserve all water rights, but to obligate itself, as the development proceeded, to transfer *sufficient water rights* to the Lexington HOA.

Summary Judgment Order at 8.

Since the information regarding the groundwater permit was not available at the time that the *Summary Judgment Order* was issued, the Special Master did not have the benefit of reviewing all of the “circumstances leading up to” the execution of the CC&R’s. Accordingly,

the *Summary Judgment Order* does not accurately reflect the “circumstances leading up to its execution.”

At around the same time as the protests on the ground water permit were being resolved, INC drafted the CC&R’s promising to leave “sufficient water” on the subdivision lands. In light of the concurrent commitment to leave all surface water on the subdivision lands, the “sufficient water” promised in the CC&R’s must be interpreted to mean that INC intended to convey all of the surface water to LHOA.³ How else could LHOA guarantee that the commitments and obligations associated with the groundwater permit are complied with into the future? To the extent that there is any dispute over the interpretation of the CC&R’s, they must be interpreted against the drafter – INC. See *Farnsworth v. Daiymen’s Creamery Assoc.*, 125 Idaho 866, 870 (App. Ct. 1994) (ambiguities interpreted against drafter).

The Master Declaration to the CC&R’s states that INC would “reserve[] unto ... itself ... all water and water rights ... and a nonexclusive easement” for the pressurized irrigation system. *Id.* However, the Master Declaration further states that the irrigation system and water rights would be transferred to LHOA. In light of INC’s specific commitment to leave all the surface water on the subdivision lands, it is not surprising that the CC&R’s and deeds do not provide that INC would retain any portion of the surface water but provide that “Surface water for irrigation appurtenant to each phase of development of the Property will be conveyed to the Association as each plat is recorded.” *Id.*

Now, fifteen years after the fact, INC asserts that the CC&R’s were never intended to be interpreted consistent with its promises to IDWR. Rather, INC asserts that while it was promising IDWR that it would leave the all of the surface water on the subdivision lands, it was

³ In fact, the Master Declaration of the CC&R’s specifically acknowledges the “Groundwater appropriated for the domestic water system.” *Summary Judgment Order* at 3.

also drafting CC&R's that would allow INC to retain the water and transfer that *same water off* the subdivision lands.

INC now contradicts its prior commitments and claims ownership to water on lands that have been conveyed to LHOA and the homeowners. It is inconceivable that the SRBA Court could decree a water right where, as here, the claimed owner, INC, does not own the lands to which the water right is appurtenant.

Absent the unreliable Roylance affidavit, the Court is left with the CC&R's. Yet, the "circumstances leading up its execution" belie the determination in the *Summary Judgment Order* that INC would retain water for lands that it does not own. Now that these circumstances have come to light, reconsideration is necessary to ensure that the ownership of the Jacobs water correctly reflects INC's and Mr. Roylance's prior commitments and intentions. Accordingly, LHOA should be the owner of all of the appurtenant surface water rights.

II. The Total Irrigated Acres Determination in the SR&R is Inconsistent with the Testimony Presented at Hearing.

At hearing, all parties presented evidence as to the total irrigated acreage. The SR&R accepted the information from INC's engineer, SPF Water Engineering, LLC, in determining that LHOA's acreage should be 170 acres based. SR&R at 4-5. This decision was based entirely on the testimony of Mr. Roylance (INC's board member), *id.* at 5, ¶ 12, who denigrated his own analysis in order to support an analysis that gave INC more water. See SR&R at 4-5. This recommendation is in error.

In 2001, INC hired Mr. Roylance to conduct an acreage analysis on the subdivision. According to Mr. Roylance's affidavit filed in the summary judgment proceedings, *INC used that analysis to determine whether it had conveyed "sufficient water" to LHOA. Roylance Aff.* ¶ 7. Mr. Roylance's analysis determined that the total irrigated acres were at least 176.95 acres.

LHOA agrees that Mr. Roylance used the proper methodology for determining the total irrigated acreage in the subdivision. At hearing, LHOA identified two concerns with Mr. Roylance's analysis that necessitated a minor revision to the total acreage determination – recognizing that the irrigated acres are 182.9 acres.

Mr. Roylance now disputes *his own analysis* – even though INC used this analysis in 2001 to determine the quantity of water it would convey to LHOA. *Roylance Aff.* at ¶ 7. Now, only *after* objections were filed against INC's water right, Mr. Roylance asserts that a subsequent analysis is "more accurate" and that the total irrigated acreage is 169.7 acres. The *SR&R* draws support for its conclusion from Mr. Roylance's testimony. *SR&R* at 5 ¶ 12. As discussed above, however, Mr. Roylance's testimony cannot be relied upon as it frequently changes. Furthermore the testimony at trial is that the CAD analysis conducted by Mr. Roylance is a common and reliable method for determining irrigated acres.

The SPF analysis suffers from a fatal flaw. The undisputed testimony at the hearing is that the SPF analysis *failed to account for all irrigated acres*. As explained in LHOA's response to INC's post trial brief:

The analysis performed by SPF (as testified to by Terry M. Scanlan), however, does not support the acreage reduction now promoted by Roylance. Furthermore, unlike the Roylance analysis, all parties recognize that the SPF analysis fails to account for all irrigated acres. In his *Rebuttal Expert Report*, Shaw explained how Scanlan's report failed to properly account for the actual irrigated acreage. *Shaw Rebuttal* at 1. INC admits this fatal flaw, but attempts to pass it off as "just the nature of the beast." *INC Br.* at 4. Moreover, INC attempts to dismiss this failing by asserting that such discrepancies are "relatively small areas" and that discrepancies "cancel each other out." *Id.* This assertion is baseless. INC cannot point to any evidence or testimony to support this assertion. Indeed, there is no indication in the testimony that the total **uncounted** irrigated acreage is equal to the total **counted** non-irrigated acreage. Without such an analysis, INC cannot assert that the discrepancies will "cancel each other out." Rather, the undisputed testimony is that the SPF analysis fails to account for all irrigated acres.

Furthermore, the Special Master recognized that there are “high expectations regarding the quality of landscaping in the Subdivision.” *SR&R* at 6. The Special Master found “that brown or dying vegetation is unacceptable to the homeowners of the Subdivision. The homeowners expect the landscaping to be adequately watered and maintained for the purpose of protecting the value and desirability of the property in the subdivision” *Id.* This is consistent with Mr. Roylance’s prior testimony before the Department INC wanted to “*use as much of the water as we feasibly can on the project both to recharge the aquifer and to keep it green.*” (Emphasis added). By limiting the number of irrigated acres, the *SR&R* leaves LHOA at risk of not receiving sufficient water to maintain their landscaping.

Accordingly, the Court should alter the irrigated acreage determination in the *SR&R* to reflect total irrigated acres of 182.9 acres.

III. All Parties Agree that LHOA Can Beneficially Use More than One Inch Per Acre.

Testimony at hearing showed that the LHOA could beneficially use more than one inch per acre for irrigation. In fact, all parties agreed that more than 1 inch per acre, and as much as 1.13 inches per acre, could be beneficially used – especially during the hot times of the year when the lawns within the development are under increased stress. In dismissing the duty of water analysis conducted by David Shaw for LHOA as being “theoretical,” *SR&R* at 8, the *SR&R* fails to recognize that INC’s own experts agreed that LHOA could beneficially use more than 1 inch per acre, *see INC’s Post Trial Brief* at 14 (indicating that the SPF analysis showed that LHOA could beneficially use 1.08 inches per acre).

Mr. Shaw’s analysis was the best evidence available at the hearing to determine the duty of water. The analysis was based on Mr. Shaw’s experience and professional judgment. In the end, no party disagreed with his analysis and all parties agree that LHOA can beneficially use

more than 1 inch per acre. Indeed, in order to ensure that the landscaping is properly maintained and meets the “high expectations” of the homeowners, *see SR&R* at 6, more than 1 inch per acre is required. INC’s own experts testified to that fact.

Finally, since there are no actual water measurements presented at hearing, the best evidence available is the undisputed testimony that more than 1 inch per acre is needed to ensure that the landscaping is sufficiently watered. Two expert reports were conducted and each determined that LHOA could beneficially use more than 1 inch per acre. The concurrence among all parties should not be lightly disregarded. LHOA could not have done more to meet its burden in this matter. As such, the *SR&R* should be amended to reflect a diversion rate equal to 1.13 inches per acre.

IV. The Condition Regarding Surface and Ground Water Uses Is Not Sufficient to Protect the Rights & Interests Guaranteed by INC Through the Permitting Process

Should the Special Master deny LHOA’s request for reconsideration of the ownership issues, then the *SR&R* should be amended to require a comment on the water rights that adequately protects LHOA’s interests. The *SR&R* recognizes that a condition on groundwater permit 63-11143 limited the ability to transfer the surface water from the land. The following comment was recommended for the surface water rights:

The ability to transfer this water right pursuant to Idaho Code § 42-222 is contingent upon a finding by the Department that such transfer will not be cause for the Department to further limit the use of water right 64-11143.

SR&R 13. This comment does not adequately protect the interests of LHOA and is at odds with the limitations associated with permit 63-11143 and agreed to by INC.

As recognized by the Special Master, the conditions on permit 63-11143 have an impact on the above water rights. *See SR&R* 12-13. It is this recognition that prompted the

recommendation to include the above comment. However, the comment still authorizes a transfer and could force LHOA to expend significant time and expense, *again*, to protect its interests. This is at odds with the clear language on permit 63-11143.

The condition on water permit 63-11143 states that “Sale or transfer of surface water from any portion of these properties *will* be cause for the Department to *further limit* the use of this right.” *Id.* at 13 (emphasis added). The *SR&R* appears to read this as creating an issue that is “beyond the scope of these proceedings.” *Id.* Based on this, the *SR&R* leaves for a future date the determination of “any limitations that may be imposed pursuant to an administrative transfer proceeding.” *Id.* at 12-13. This decision misreads LHOA’s intent and the purpose for including a condition on the surface water rights.

LHOA does not ask this Court to create or validate any limitations that may be placed on permit 63-11143 should a portion of the surface water rights be transferred. Rather, the condition on permit 63-11143 states that *any* transfer “*will* be cause for the Department to further limit” the use of permit 63-11143. There is no ambiguity as to the intent and affect of this language. While the extent of any limitation is left to be determined by the Department, there is no question that any transfer “*will*” create further limitations on the permit. Accordingly, any condition placed on the above surface water rights should provide adequate protection. In its post-trial brief, LHOA recommended the following language:

Pursuant to a settlement reached in the permitting process for permit 63-11143, no surface water may be sold or transferred from any portion of the place of use identified within the lands commonly known as Lexington Hills Subdivision.

This comment is necessary to ensure that LHOA’s interests in its water (both the surface and ground water) are adequately protected. Failure to adequately protect LHOA’s interests by including an appropriate comment would leave LHOA without recourse, should INC

successfully attempt to transfer a portion of the surface water from the subdivision properties. If, following such a transfer, it is determined that injury has occurred, LHOA would be unable to come back to this Court and seek more of the surface water due to the final nature of the decree.

INC made representations to IDWR that it would never transfer the surface water from the subdivision lands. Any comment placed on the water must ensure that INC complies with its own conditions and promises.

V. The Special Master is Without Authority to Decree a Water Right to a Party that Failed to Make a Claim for That Water

Finally, this Court is without jurisdiction to recommend a water right for decree, where the water has not been claimed by the party receiving the decree. *See* I.C. § 42-1409. Failure to make such a claim will result “in a court determination that no water right exists.” *Id.* at § 42-1408. Here, INC never claimed any ownership in, interest in or use of water on the lands associated with water claimed by East Hills. The *SR&R*, however, provides INC with a portion of water appurtenant to those lands. Since INC did not claim that water, it should be decreed in the name of LHOA.

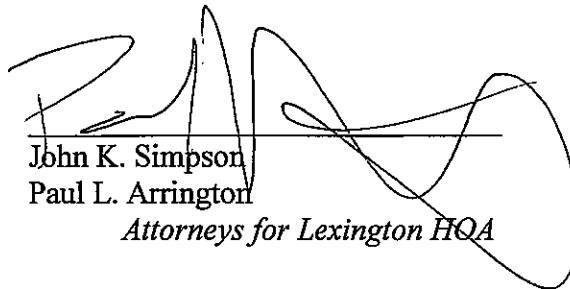
CONCLUSION

The facts and circumstances surrounding the creation of the CC&R’s, and discovered following the *Summary Judgment Order*, demonstrate that LHOA should be the owner of all of the Jacobs water right. At the same time INC claims to have been reserving water to itself, it was promising IDWR that it would leave all surface water on the subdivision lands. This promise and its impact on the ownership of the Jacobs water right cannot be overlooked. Furthermore, the *SR&R* fails to reflect the testimony provided at the hearing. There are 182.9 total irrigated acres and all parties agree that LHOA can beneficially use more than 1 inch per acre. Finally, the condition placed on the surface rights should reflect the actual limitations

imposed through the permitting process for right 63-11143. Accordingly, the *SR&R* should be altered and/or amended.

Dated this 30th day of March, 2009.

BARKER ROSHOLT & SIMPSON, LLP



John K. Simpson
Paul L. Arrington
Attorneys for Lexington HQA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of March, 2009, I caused to be served a true and correct copy of the foregoing **LEXINGTON HILLS HOMEOWNERS' ASSOCIATION'S PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW** by the method indicated below, and addressed to each of the following:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
Twin Falls, ID 83303-2707

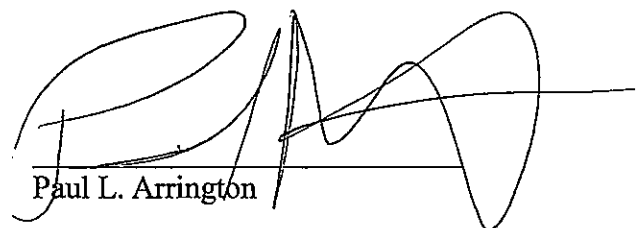
☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098

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Paul L. Arrington

Attachment

**HEARING TO RECEIVE EVIDENCE AND TESTIMONY IN CONNECTION WITH
PROTESTED APPLICATION FOR PERMIT NO. 63-11413 IN THE NAME OF FLOATING FEATHER
HILLS, INC. AND TREASURE VALLEY VILLAGE
BEFORE GLEN SAXTON, HEARING OFFICER
JUNE 12, 1991 BOISE, IDAHO, J.R. WILLIAMS BUILDING**

[...]

Phil Barber, Attorney for Floating Feather Hills, Inc.: ...concerning the use and availability of Farmers Union Canal Company surface water, irrigation water, over the area which is the location of beneficial use in this application. The two applicants have between them approximately, and I only say approximately because sure as I pick an exact number I will be wrong by one or two numbers, approximately 259 shares of the Farmers Union Canal Company making available in lay terms, in lawyer terms, 259 inches of the right, again that's in lay terms because presently people speak of shares as if they were inches recognizing that the Farmers Union Canal has both water rights in storage and I believe, in the river but I am not certain how that actually gets measured is something that you technical people know and we lawyers don't. The applicant will agree to the following:

- 1) We will not, this applicant will not substitute in effect ground water for surface irrigation water. It is nobody's interest to do that. This applicant will agree therefore not to sell or transfer the Farmers Union irrigation water right off of the property, which is the place of beneficial use in this application.
- 2) The applicant will develop a pressurized irrigation system to be made available on an economic feasibility basis for the appropriate areas that can be irrigated by such a system in these two projects which make up the place of beneficial use. Those places are common, open and public spaces including the proposed school site on Floating Feather Hills development as well as within certain areas of ponds and creeks. We will provide it to lots where is economically feasible, the economic feasibility issue can not be determined with precision until design is done, the city of Boise's Visions Committee has preliminarily noted that costs to homeowners, both initial and operating and maintenance costs tend to render pressurized irrigation systems not economically feasible in lots, generally, of less than half acre. We won't know if we can reach lots of smaller size from that until we have done the design. The principal economic issue being in the distribution system but we will provide, these applicants will provide surface irrigation Farmers Union Water to all lots where the economic feasibility does render it appropriate and as we design the system we will advise the Department of how that actually is going to shake out in terms of lot sizes where the economic breakpoint is. We can do a little bit of testimony I think about generally where those lots likely are. The bottom line is we will not strip the surface water, irrigation water, from these lands and we are willing to make a commitment that can be a condition that we will not transfer those surface rights away from these lands and that we will provide a pressurized, surface irrigation system.

[...]

HEARING TO RECEIVE EVIDENCE AND TESTIMONY IN CONNECTION WITH
PROTESTED APPLICATION FOR PERMIT NO. 63-11413 IN THE NAME OF FLOATING FEATHER HILLS, INC. AND
TREASURE VALLEY VILLAGE
BEFORE GLEN SAXTON, HEARING OFFICER
JUNE 12, 1991 BOISE, IDAHO, J.R. WILLIAMS BUILDING

Mr. Barber: Why is it in your interest to provide a pressurized irrigation system to distribute that surface Farmers Union Canal water?

David Roylance, witness for Floating Feather Hills, Inc.: Well, one thing it will be an amenity, if we can provide it at a cost that we can afford it would be a great amenity for the ultimate consumer, that is the guy that buys the lot and also it would serve as a recharge to the aquifer. Any kind of surface application of water like that would tend to recharge the aquifer to some extent and so we would be putting something back in the aquifer that would replace what we take out.

Mr. Barber: Isn't it true that by using surface water you reduce the demand on the aquifer as well?

Mr. Roylance: Yes we would.

Mr. Barber: Do you have any intention of replacing surface irrigation water you presently have available with ground water?

Mr. Roylance: No we don't.

Mr. Barber: You heard my prior commitment that you would not transfer or sell surface irrigation water off of the project?

Mr. Roylance: That's right. We have no desire or need to sell the water, we want to use as much of the water as we feasibility can on the project both to recharge the aquifer and to keep it green.

[...]