

GIVENS PURSLEY LLP

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DEPARTMENT OF
WATER RESOURCES

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LAW OFFICES
601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

MICHAEL C. CREAMER
DIRECT DIAL: (208) 388-1247
EMAIL: MCC@givenspursley.com

Gary G. Allen
Peter G. Barton
Christopher J. Beeson
Clint R. Bolinder
Erik J. Bolinder
Jeremy C. Chou
William C. Cole
Michael C. Creamer
Amber N. Dina
Elizabeth M. Donick
Thomas E. Dvorak
Jeffrey C. Fereday
Justin M. Fredin
Martin C. Hendrickson

Steven J. Hippler
Donald E. Krickrehm
Debora K. Kristensen
Anne C. Kunkel
Michael P. Lawrence
Franklin G. Lee
David R. Lombardi
Emily L. McClure
Kenneth R. McClure
Kelly Greene McConnell
Alex P. McLaughlin
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller

Judson B. Montgomery
Deborah E. Nelson
Kelsey J. Nunez
W. Hugh O'Riordan, LL.M.
Angela M. Reed
Justin A. Steiner
Robert B. White

Of Counsel
Conley E. Ward

RETIRED
Kenneth L. Pursley
James A. McClure (1924-2011)
Raymond D. Givens (1917-2008)

December 9, 2011

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DEC 12 2011

Randall C. Budge
201 East Center Street
Pocatello, ID 83201

Givens Pursley, LLP

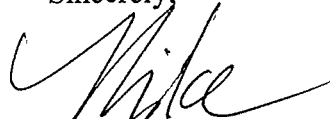
Re: *City of Hailey – Amended Settlement Agreement Term Sheet*

Dear Randy:

I am enclosing one fully executed original of the *Amended Settlement Agreement Term Sheet* which is dated November 30, 2011.

Please let me know if you have any questions concerning the enclosed Agreement.

Sincerely,



Michael C. Creamer

MCC:js
Enclosure
9955-2_1341532_1.DOC

cc w/enc: Fritz Haemmerle, Esq.
Chris Bromley
Roxanne Brown, SPF Water Engineering

COPY

AMENDED SETTLEMENT AGREEMENT TERM SHEET

The City of Hailey, ("City") by and through its Mayor and Indian Creek Ranch Owner's Association, ("Association") by and through its board president enter into this Amended Settlement Agreement Term Sheet ("Agreement"), to fully and finally compromise and settle their pending and disputed water right claims in the SRBA based on the following terms and conditions reached by the parties at the mediation on October 10, 2011, entered into effective as of October 13, 2011 (the "October 13, 2011 Agreement"). To allow the parties' settlement to be incorporated in a stipulated settlement in a form in which the Idaho Department of Water Resources ("IDWR") will be a signatory, without materially changing the manner in which the parties intend that their water right claims to be decreed in the SRBA and administered by IDWR, the City and the Association agree to amend and restate the October 13, 2013 Agreement in its entirety as follows:

1. City agrees to withdraw with prejudice all pending objections to the Association's water right numbers 37-296B, 37-296C, 37-19740 and 37-21412 and consents to partial decrees being entered for each of said water rights as recommended in the Amended Director's Report, except the place of use for water right no. 37-296C will be 77.6 acres in accordance with the Association's Amended Objection lodged November 15, 2010. This will result in irrigation rights which total 4.01cfs and 112.6 acres under water right nos. 37-296B and 37-296C. Additionally, the City will not presently or in the future object to the Association's use of water as authorized by existing permit 37-22624 (small ponds) or as described in the Association's August 15, 2011 application for permit 37-22659 (stream flows).
2. Association agrees to withdraw with prejudice all of its objections to the City's water right numbers 37-296A, 37-717, 37-1216 and 37-7854 and consents to partial decrees being entered as claimed and amended as described below.
3. Association agrees that it will not object to the City's amendment of its claim for water right number 37-717 to claim a diversion rate of 2.48 cfs, which is an increase of 0.76 cfs over the currently claimed diversion rate of 1.72 cfs, and Association will not object to the IDWR's recommendation for the City's water right no. 37-717, provided, that the additional 0.76 cfs shall be claimed and recommended for diversion on a year round basis, but subordinate to the Association's water right no. 37-19740. The parties' agreement in this Section 3 shall be effected by IDWR's recommendation that water right 37-717 be split into 37-717A (1.72 cfs non-irrigation season of use) and 37-717B (0.76 cfs year-round).
4. For purposes of all of the City's water rights in Indian Creek the City is limited to a senior right of no more than 131 inches (2.62 cfs) and a total combined diversion rate under all of its water rights of 3.38 cfs year round. The parties confirm that the City's 131 inches (2.62 cfs) is not subordinate to any of the Association's water rights or the minimum flows described in the 1983 Agreement. Those portions of the City's water rights over and above 131 inches (2.62 cfs) are subordinated during the periods, in the quantities and under the conditions described herein and as set forth in the 1983 Agreement.

5. Attached as Exhibit 1 is a summary of the water rights of the parties as agreed to above.
6. The 1983 Agreement between the City and Indian Creek Ranch Owners Association attached hereto as Exhibit 2 is ratified and reconfirmed in its entirety, shall remain in full force and effect and binding upon the parties. To the extent there is any ambiguity between this Agreement and the 1983 Agreement with respect to the parties' intent in the 1983 Agreement, the terms of this Agreement shall control.
7. There will be three telemetry in-stream measuring devices with data loggers to record and measure instantaneous flows in Indian Creek. In addition to the City's existing measuring device (No. 1) at its' spring diversion, the City agrees to install, operate and maintain two new measuring devices as required by paragraph 4 of the 1983 Agreement as soon as practicable and no later than thirty (30) days following the end of the 2012 irrigation season. The second measuring device (No. 2) will be located in the stream channel below the confluence of the artesian spring channel and Indian Creek in the NE1/4 SE1/4 of Section 22. The third measuring device (No. 3) will be located below Indian Creek Road and above the first downstream irrigation diversion in the NW1/4 NE1/4 of Section 27.

For compliance with paragraph 4 of the 1983 Agreement, measuring device No. 2 shall be utilized to maintain at a minimum the agreed upon flow of 0.75 cfs; and measuring device No. 3 shall be utilized to maintain at a minimum the agreed upon flow of 1.50 cfs, except during the irrigation season to the extent that the Association's irrigation water rights totalling 4.01 cfs provide sufficient flow to satisfy these minimums. It is understood and agreed that in meeting these flow requirements the Association's actual diversions above measuring device No. 3 will be deducted. The Association will cooperate with the City in providing diversion information from its members.

The City's consultants will cooperate and coordinate with the Association's consultants in the design and installation of the measuring devices. If the City fails to do so, the Association may install the measuring devices and the City agrees to reimburse the Association for the full cost. All flow measurement data made by either party shall be equally available, shared with each other and posted on an electronic site equally accessible to the parties.

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8. The City also agrees that it will not seek to acquire the Association's water rights by means of eminent domain; provided however, that it is understood and agreed that this Section 8 will be binding upon the current City council and hopefully will be honored in good faith by future City councils who may not be legally bound hereby.
 9. The Association contemplates filing an Application of Transfer after its' water rights have been decreed for the purpose of adding points of diversion and places of use on lots of certain homeowners that have historically irrigated their lots but are not included in the place of use of the partial decrees that will be the result of this Agreement. The City agrees not to protest the transfer application provided it does

not result in an enlargement of the Association's water right or conflict with the terms of this Agreement.

10. This Agreement is entered conditional upon approval by the Idaho Department of Water Resources, the City Council and Association's Board of Directors. If the Department does not approve this agreement in full or in part, the parties agree to meet with the Department to resolve differences. The signatories to this Agreement agree to recommend approval of this Agreement by their respective Council and Board and jointly advocate approval to the Department and objector Dana Hofstetter.
11. The parties agree to work together and cooperate in good faith as may be necessary from time to time in operating the Indian Creek water delivery systems and in resolving any problems or misunderstandings that may hereafter arise, it being the intent to avoid conflicts, maintain neighborly relationships in protecting and preserve the beneficial use of their water rights.
12. The parties acknowledge and agree that upon approval of this Agreement the following steps will be forthwith taken to implement the Agreement:
 - a. The City to amend claim 37-717 to provide for a total of 2.48 cfs;
 - b. IDWR to prepare SF-5s and recommendations consistent with this Agreement;
 - c. Each party will withdraw their pending objections to the others claims as described above
 - d. Secure approval of this Agreement as required

DATED this ¹²~~30~~ day of November, 2011.

CITY OF HAILEY:

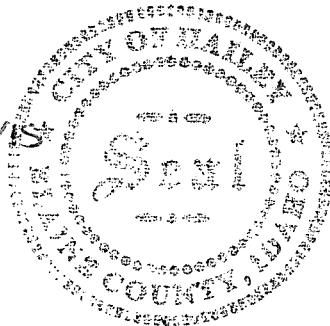
Richard L. Davis

By: Mayor - RICHARD L. DAVIS

Mary Core

Attest: Mary Core

City clerk



INDIAN CREEK RANCH OWNERS ASSOCIATION, INC.

E. Ben Hoff

By: E. Ben Hoff, President

Jean Latham

Attest: Jean Latham

Exhibit No. 1
Summary of Water Rights

Right Holder	Right #	Priority	Quantity		Purpose of Use, Season of Use													
			CFS	AF														
					15-Apr	5	6	7	8	9	31-Oct	1-Nov	12	1	2	3	14-Apr	
City	37-296A	4/1/1880	2.62		Municipal	2.62*												
ICROA	37-296B	4/1/1880	2.72		Irrigation			2.72										
ICROA	37-296C	4/1/1880	1.29		Irrigation			1.29										
													Stream Flow**	.75 & 1.5				
City	37-1216	4/1/1884	0.9									Municipal	0.9***					
City	37-717A	8/1/1907	1.72									Municipal	1.72***					
City	27-717B ****	8/1/1907	0.76		Municipal	0.76*							0.76***					
ICROA	37-19740	6/1/1931		19.6	Irrigation Storage				19.6 AF									
ICROA	37-21412	8/22/1972		19.6	Aesthetic Storage													
City	37-7854	7/23/1980	3.38		Power	3.38							3.38					

* 2.62 + 0.76 = combined diversion of 3.38 cfs
 .. In 1983 Agreement, stream flows established per paragraph No. 4 are junior to City's diversion of 2.62 cfs per paragraph No. 2
 *** 0.9 + 1.76 + 0.76 = combined diversion rate of 3.38 cfs
 **** Subordinated to 37-19740

ORIGINAL

AGREEMENT

THIS AGREEMENT, made and entered into this 23 day of September, 1983, by and between the City of Hailey, an instrumentality of the State of Idaho, party of the first part, hereinafter called "City", and the Indian Creek Ranch Owners Association, incorporated under the laws of the State of Idaho, party of the second part, hereinafter called "Owners", is as follows:

W I T N E S S E T H:

WHEREAS, City was issued State of Idaho Water Permit No. 37-7854 with a priority date of July 23, 1980, for the purpose of developing additional water from the Indian Creek Springs to augment the flows so as to be able to generate power with a total of 5 c/f/s by partially using their existing system; and,

WHEREAS, Owners represent an association of 1828 lot owners and 20 townhouse sites who have succeeded to certain decreed water rights; and,

WHEREAS, Owners have filed Application for Permit No. 37-7909 requesting the use of 6 c/f/s of water from Indian Creek at places substantially below the springs which the City seeks to develop and the owners have filed Application No. 37-8035 for 3.5 c/f/s of ground-water for domestic purposes; and,

WHEREAS, the City protested Application No. 37-7909, and the issuance of said permit depends upon the agreement of the parties hereto, and Application No. 37-8035 has been published but is not issued; and,

WHEREAS, this issue and other issues need to be resolved concerning the waters of Indian Creek Springs and Indian Creek and the parties wish to delineate their agreement in writing; and,

WHEREAS, the City of Hailey intends to construct a water reservoir and piping facility in the Indian Creek area. The City has applied for a Conditional Use Permit with Blaine County to build the project. Some of the individuals of the Ranch Owners Association have protested the project proposed by the City. The owners are desirous of deeding an alternate site to the City pursuant to the terms of this Agreement. An appeal is presently pending before the Blaine County Board of Commissioners regarding the issue of whether Hailey may build a water reservoir and piping facility on BLM property adjacent to Ranch Owners property.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and other good and valuable consideration, the parties hereto agree as follows:

1. Purposa. The purpose of this agreement is to delineate and to prioritize as between the parties hereto, the rights of the parties to previously unappropriated waters of Indian Creek during the non-irrigation season as well as to the methods of protection of certain base flows in the stream. A further purpose is to provide a site for the City's water reservoir and piping facility and related purposes.

2. Decreed Water Rights. The parties acknowledge that the City owns and has priority to 131 miner's inches of the waters of Indian Creek Spring which may be diverted for "municipal" purposes on a year-round basis. The Owners are entitled to and were decreed all of the water over and above the 131 inches for irrigation and other beneficial uses during the irrigation season and for stock water and other related non-irrigation season uses. The parties further recognize that all of the waters of Indian Creek Spring and Indian Creek are presently utilized for beneficial purposes during the irrigation season.

2a. The parties acknowledge that in a year where there is not more than 131 miner's inches available in the waters of Indian Creek Spring at the City's pipeline diversion, the City would be entitled to all of

its 131 miner's inches, before the Owners are entitled to any water.

3. Protection of Existing Water Source. The parties acknowledge that their primary interest is the protection of the present respective water supply from the Indian Creek Springs. While it is acknowledged that water measurements on Indian Creek are infrequent and inconclusive, it appears that the approximate 6 c/f/s of flow is totally utilized either by diversion to Hailey through their pipeline or by the Owners during the irrigation season. Consequently, any increased diversions by the City to 5 c/f/s pursuant to Permit No. 37-7854, may require further development of the springs. The City acknowledges and agrees that if said development is pursued and results in a decline in present spring flows, or would force the pumping of water so as to make the present water amounts available, that the City shall be responsible for the installation of pumping equipment and all of the annual operation and maintenance costs so to insure the flow to the Owners.

4. Minimum Flow. Owners agree that if the City if to proceed pursuant to Permit No. 37-7854, the City agrees that the stream will be protected by the establishment of a minimum flow. Two continuous measurements will be made to insure said flow. .75 c/f/s will be required in the creek channel below the inflow from the artesian well in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 23; and 1.5 c/f/s will be required below the lake in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27. City shall install and maintain measuring devices at these locations. Any water which arises below City's pipeline shall also be deemed subject to Owners' rights under 37-7909.

5. Power Development. It is understood and agreed that the City's power development may not be feasible. In the event that the City elects not to pursue power development, Owners may pursue power development. If no power proposal is pursued to completion, it is acknowledged as between the parties hereto that the other uses identified in Owners'

Application 37-7909 shall be deemed in full force and effect for the purpose of water right perfection.

6. Fire Protection - Use of Penstock. Under the plan of the City, if a water project is developed as the City now proposes, the addition of valves at given points along the penstock could help Owners solve their fire protection problems. If the City's water project is constructed, provision will be made for said valves at locations where requested by Owners, all at the expense of Owners. An operating criteria shall be developed by the City and Owners concerning the operation of said valves, it being understood that said use will only be in times of emergency. Owners shall be liable for any damages to the City which may result from the unauthorized or non-emergency use of said valves and appurtenant fire protection equipment installed by the Owners.

7. Easements. Some question exists as to the City's easement rights. This agreement (entered into by Owners as an Association) should not be construed as a grant of easement across the particular parcels (if one needs to be obtained) for the enlargement of the existing pipeline or for any other purposes. However, the parties acknowledge and understand that the entire agreement and its enforceability is contingent upon the grant of certain permanent easements for pipelines,, power lines and mains, as well as access to the project itself, and certain temporary construction easements or licenses for the purposes of excavation, construction, installation and refilling ditches and trenches for the location of such pipelines, power lines and mains, more fully described as follows:

a. A permanent easement from the project site to the dead end of Homestead Drive between lots 41 and 42 for access to the project, pipelines, power lines and mains, 40 feet in width.

b. A temporary construction easement or license for the construction of the same, possibly 40 feet in width on either side of the permanent easement.

c. A permanent easement for the construction of the same within the Homestead Drive right-of-way along side lots 42 extending SSW and continuing NW on the road alongside the southern border of lot 40 or the northern border of lot 37, terminating at the intersection with the City of Bailey's existing pipeline easement.

d. A temporary construction easement or license for the same and alongside the permanent easements, ~~on lots 42 and 40 or 37, approximately 40 feet in width.~~

e. It is agreed that any parcel of property subject to a temporary construction easement will be returned to the state existing prior to construction.

f. Owners acknowledge and agree to grant all permanent easements with regard to common area of Owners and to use best efforts to secure the remaining easements regarding individual lot ownership. Owners agree to convey by deed the "alternate site" described on Exhibit "A", attached hereto. The parties agree that the deed will contain a restrictive covenant and reversion providing that the "alternate site" be used by the City only for water reservoir and piping facilities and purposes directly related thereto, including hydroelectric power generation.

W.R.
J.R.
J.H.
g. It is understood that the association does not have the authority to grant easements on private lots.

h. All easements are described on Exhibit "B", attached hereto and incorporated herein.

8. Domestic Water. Owners have filed Application No. 37-8035 to use subterranean water.

The Owners acknowledge and agree that if current diversions of subterranean waters or any increased diversions by the Owners pursuant to Application No. 37-8035 result in a decline in the present flows, or would force the pumping of water so as to make the present water available, that the Owners shall

be responsible for the installation of pumping equipment and all the annual operation and maintenance costs so as to insure the flow to which the City is entitled.

9. No Contest. The parties agree that they will not contest the beneficial uses of water of the other, and acknowledge that said present beneficial uses are perfected.

10. Withdrawal of Protest. The City agrees to withdraw its protest to the Owners' application 37-7909. The provisions of this agreement shall be deemed as conditions to the City's Permit No. 37-7854, and to the issuance of Owner's Application No. 37-7909, and incorporated therein and made a part thereof as binding conditions.

11. Authority of Owners. Owners are an Association under state law. The Board of Directors have authority to bind their members to this Agreement. The parties to this Agreement understand that the Association has been polled prior to the execution of this Agreement.

12. Work in Process on Permits. The parties hereto waive the requirements of Idaho Code §42-311 concerning Permit No. 37-7854 and 37-7909 as between each other. Both agree not to contest applications of the other to extensions of time under their respective permits.

13. Disclaimer Responsibility. Both parties hereto waive causes of action against the other except for injuries caused as a result of the negligence or intentional acts of the other's agents or employees, or as otherwise stated herein.

14. Variations in Water Flows. It is anticipated that from time to time scheduled maintenance of a power facility will require dumping of water into the stream channel so as to bypass the power facilities for the purposes of conducting such maintenance. It is understood and agreed that the City shall give forty-eight

(48) hours notice of scheduled maintenance. In the event of emergency turn-offs or by-pass, the City shall give as much notice as possible to the Owners.

15. Waiver as to Claims of Right for Diversions Below Owners. It is understood that there are other lands below those of Owners on Indian Creek which may have some right to the creek water during the irrigation season. This Agreement is entered into without knowledge, nor representation as to those additional rights, if any.

16. Measuring Devices. The parties herein agree to furnish and properly maintain measuring devices at their own points of diversion (exclusive of the devices required by Paragraph 4) according to standard specification for measuring devices recognized by the Idaho Department of Water Resources.

17. Blaine County Approval. The Ranch Owners Association agrees to cooperate with the City of Hailey in securing Blaine County approval of a Conditional Use Permit on the alternate site. This Agreement is expressly made contingent upon Blaine County approval of the Hailey project on the alternate site.

18. Owners' Design Review Committee Approval. It is agreed that prior to project construction, the City shall secure the Ranch Owners' Design Review Committee approval of the following with respect to the project:

a. Landscaping, building design and materials, fencing, berming, noise abatement (0 decibel increase at 300 feet). Other than the specified noise abatement, said approval shall not be unreasonably withheld. The parties agree that this provision has been complied with as of the date of the execution of this agreement.

19. Attorney's Fees. In the event that either party hereto must initiate legal action to remedy a default or to terminate through foreclosure action the other's rights, the prevailing party shall be awarded reasonable attorney's fees.

20. The parties hereto bind themselves, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused their presence to be executed the day and year first above written.

CITY OF HAILEY

By:

Worrell J. Rainey
WORDELL J. RAINEY,
Mayor

ATTEST:

Constance M. Ellway
Constance M. Ellway
Clerk

INDIAN CREEK RANCH OWNERS
ASSOCIATION

By:

Nicholas Allen
President

ATTEST:

James R. Holcomb
Secretary