

RECEIVED
MAY 25 2022
DEPARTMENT OF
WATER RESOURCES

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "**Agreement**") is made and entered into as of 4/30, 2022 ("**Effective Date**"), by and between Green Head Ranch, LLC, an Idaho limited liability company ("**Green Head**"), and Island High Line Ditch Company, an Idaho non-profit corporation ("**IHDC**"). Green Head and IHDC may each be referred to individually as a "**Party**" or, collectively, as the "**Parties**."

RECITALS

- A. Green Head owns that certain real property located in Canyon County, Idaho, and legally described on Exhibit A, attached hereto and incorporated herein (the "**Green Head Property**").
- B. IHDC operates an irrigation canal and related facilities used to divert and deliver irrigation water from the Boise River to its members, which include Green Head, and to its members' properties, which include a portion of the Green Head Property (collectively, the "**IHDC Facilities**").
- C. A portion IHDC's main canal is located on the Green Head Property ("**Canal Portion**").
- D. Green Head holds licensed water right no. 63-34334, which authorizes the diversion of 13.1 cfs of water from the Boise River for recreation, wildlife, and recreation and wildlife storage uses on the Green Head Property from September 30 to February 28 (the "**Winter Water Right**").
- E. Green Head has filed Transfer Application No. 84986 ("**Transfer 84986**") with the Idaho Department of Water Resources ("**IDWR**"), which seeks to change the Winter Water Right by adding a new point of diversion on the Green Head Property ("**New POD**"). IHDC has protested Transfer 84986 ("**IHDC Protest**").
- F. Green Head and IHDC desire to resolve the IHDC Protest and to provide for Green Head's use of the Canal Portion upon the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants set forth below, Green Head and IHDC agree as follows:

1. **Withdrawal of IHDC Protest.** IHDC hereby unconditionally withdraws with prejudice its protest to Transfer 84986.

2. **Terms and Conditions of Green Head's Use of the Canal Portion.** Green Head shall use the Canal Portion to deliver its Winter Water Right from the New POD subject to the following terms and conditions:

- a. Green Head shall indemnify, hold harmless, and protect IHDC from any liability, injury, or damage resulting from Green Head's use of the Canal Portion to deliver the Winter Water Right from the New POD to the Green Head Property.
- b. Green Head shall install one or more headgates or other facilities in the Canal Portion to prevent water diverted under the Winter Water Right from the New POD from flowing off of the Green Head Property and shall install a headgate at any pipes constructed in or into the Canal Portion, all of which shall be installed and maintained at Green Head's expense and as approved by IHDC. IHDC shall have reasonable access to said headgates to adjust or close them shut, as necessary to prevent irrigation water from flowing from the Canal Portion into Green Head's pipes during the irrigation season.
- c. Green Head will maintain the Canal Portion at no cost to IHDC, and such maintenance shall include annual burning and control of weeds along the ditch banks, removal of accumulated sediment from the ditch to maintain ditch capacity, and replacement of headgates, as necessary.
- d. Green Head's diversions of its Winter Water Right from the New POD and use of the Canal Portion as provided for herein shall not interfere with IHDC's maintenance of the Canal Portion. IHDC shall provide Green Head with reasonable notification when Green Head's use of the Canal Portion must cease for necessary maintenance. Green Head will cease use of the Canal Portion within 48 hours of such notification by IHDC. To the extent maintenance is not done by Green Head pursuant to Paragraph 2.c above, IHDC will schedule annual maintenance requiring Green Head's curtailment of use of the Canal Portion in February (rather than November through January) whenever feasible.
- e. Green Head will install a lockable headgate and measurement device at the New POD, and agrees to the Water District 63 Watermaster's control of diversions of its Winter Water Right at the New POD.
- f. Green Head acknowledges that IHDC irrigation season diversions and deliveries are paramount and that Green Head's use of the Canal Portion as provided herein will not occur while IHDC is diverting and delivering irrigation water (without written permission from the IHDC Board) or otherwise interfere with IHDC irrigation diversions or deliveries in any manner.

3. Additional Terms and Conditions.

- a. This Agreement provides only for Green Head's use of the Canal Portion to deliver its Winter Water Right from the New POD, and does not grant any right to any other use of IHDC Facilities. The Parties reserve all arguments and claims that may be made concerning any other use of IHDC Facilities.
- b. This Agreement can be terminated by IHDC upon Green Head's material breach of its terms. Green Head may terminate this Agreement upon written notice to IHDC which shall be effective upon recording in the real property records of Canyon County, Idaho.
- c. This Agreement runs with the lands described in Exhibit A, shall be recorded in the real property records of Canyon County, Idaho, and may be submitted to IDWR to resolve the IHDC Protest. This Agreement shall be binding on IHDC and Green Head and their successors-in-interest. Assignment of this Agreement by Green Head to any party other than an owner of lands described in Exhibit A requires the prior written approval of IHDC.
- d. Except as expressly provided herein, nothing in this Agreement limits IHDC's or Green Head's use of their respective water rights in their sole discretion.

4. Entire Agreement. All oral and written representations, covenants, agreements, and contracts discussed or entered into by the Parties hereto or their representatives prior to this Agreement relating directly or indirectly to Green Head's use of the Canal Portion to deliver its Winter Water Right from the New POD are merged into and superseded by this Agreement, and this Agreement constitutes the sole and the entire agreement between the Parties regarding such subject matter.

5. Advice of Counsel. The Parties hereby acknowledge and agree that they are, have been, or had the opportunity to be, represented by counsel of their own choosing during any and all negotiations that have led to this Agreement, and that they have been fully advised to the extent they deemed necessary concerning the effect of this Agreement, the terms of the settlement, and their obligations contained in this Agreement. The Parties have asked all questions deemed necessary or desirable by them or their legal counsel in order to evaluate the terms hereof to their complete satisfaction. The Parties have read this Agreement, fully understand its contents, and voluntarily accept the terms of this Agreement. In executing this Agreement, each Party has relied entirely upon their own judgment and knowledge, and the knowledge, judgment and advice of their attorneys, if any.

6. Attorney fees and costs. The Party hereto who is the prevailing Party in any administrative or judicial proceeding brought to enforce any of the provisions of this Agreement shall recover from the non-prevailing Party its reasonable costs and attorney fees incurred in such proceedings. Each Party shall bear its own costs and expenses, including attorney fees,

related to the administrative proceedings involved with the Protest and to the preparation and execution of this Agreement.

7. **All Modifications to be Written.** The Parties may modify the terms, conditions, rights, and obligations of this Agreement. However, no modification of any kind or nature, of any term, condition, right, or obligation herein, and no waiver of any term, condition, right, or obligation herein, shall be of any force or effect unless the same is in writing and signed by the Parties hereto.

8. **Compromise.** It is understood and agreed that this Agreement is made in compromise and is entered solely for the purpose of avoiding the expense, inconvenience, and uncertainty of litigation. Nothing contained herein shall be interpreted or construed as an admission or acknowledgment by either of the Parties hereto of any wrongdoing, liability, debt, or fault, of any nature whatsoever, and any and all such liabilities, faults, debts, or wrongdoings are hereby expressly denied.

9. **Headings.** The headings used herein, and the order of the paragraphs, are for convenience only, are not a part of this Agreement, and shall not be used in interpreting it.

10. **Recitals.** All recitals contained in this Agreement are true, correct, material, and are hereby incorporated herein as if set forth in full.

11. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original but all of which constitute one and the same document. The signature pages may be detached from each counterpart and combined into one document.

[Remainder of page intentionally blank; signature page follows]

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Agreement as of the Effective Date set forth above.

Green Head Ranch, LLC,
an Idaho limited liability company

By: [Signature]
Tom J. Louderback, Manager

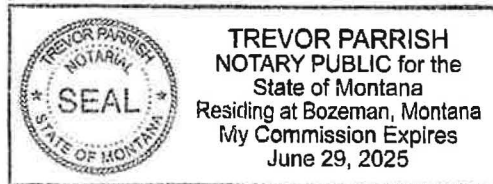
STATE OF Montana)
County of Gallatin) ss.

On this 30 day of April, 2022, before me Trevor Parrish, personally appeared TOM J. LOUDERBACK, known or identified to me (or proved to me on the oath of _____) to be the manager of Green Head Ranch, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Signature]
NOTARY PUBLIC FOR ~~IDaho~~ Montana
Residing at Bozeman, MT
My Commission Expires 06-29-2025

TP



Island High Line Ditch Company,
an Idaho non-profit corporation

By: 
Larry Winchester, President

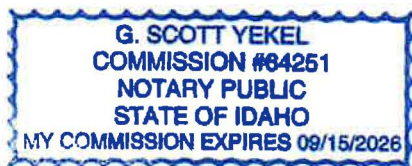
ATTEST:


Ginger Breshears, Secretary, Island High Line Ditch Company

STATE OF IDAHO)
) ss.
County of CANYON)

On this 28TH day of APRIL, 2022, before me G. SCOTT YEKEL,
personally appeared LARRY WINCHESTER, known or identified to me (or proved to me on the
oath of GINGER BRESHEARS) to be the President of Island High Line Ditch
Company, the non-profit corporation that executed the instrument or the person who executed
the instrument on behalf of said corporation, and acknowledged to me that such corporation
executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year in this certificate first above written.




NOTARY PUBLIC FOR IDAHO
Residing at Phelan ID 83660
My Commission Expires 9/15/2026

EXHIBIT A
Green Head Property Description

For APN/Parcel ID(s): 38951000 0

Parcel A:

Real property in the County of Canyon, State of Idaho, described as follows:

In Township 5 North, Range 5 West of the Boise Meridian:
Section 17: Lot 4

AND

That part of the Northwest Quarter (NW1/4) of the Northwest (NW1/4) of Section 17, Township 5 North, Range 5 West of the Boise River, lying South of the Boise River.

For APN/Parcel ID(s): 38942010 0 and

Parcel B:

A portion of the Northeast Quarter of the Northwest Quarter of Section 17, Township 5 North, Range 5 West, Boise Meridian, Canyon County, more particularly described as follows:

BEGINNING at the Southwest corner of said Northeast Quarter of the Northwest Quarter; thence North 0° 59' 19" East along the West boundary of said Northeast Quarter of the Northwest Quarter a distance of 613.19 feet to a point on the mean high water line of the South bank of the Boise River; thence South 54° 14' 52" East along said mean high water line a distance of 960.28 feet; thence South 29° 14' 06" East continuing along said mean high water line a distance of 90.21 feet to a point on the South boundary of said Northeast Quarter of the Northwest Quarter; thence North 88° 09' 59" West along said South boundary a distance of 834.38 feet to the POINT OF BEGINNING.

For APN/Parcel ID(s): 38947013 0

Parcel C:

A portion of Government Lot 3 and of the Boise River Channel as shown on the 1868 G.L.O. Survey Plat for Section 17, Township 5 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

BEGINNING at the center Quarter corner for said Section 17; thence North 88° 23' 50" West along the East-West midsection line of said Section 17 a distance of 812.39 feet; thence North 1° 12' 39" East a distance of 1,030.85 feet; thence South 88° 09' 59" East a distance of 584.90 feet to a point on the Westerly meander line for the mean highwater of the Boise River Channel as it now exists; thence South 42° 49' 39" East along said meander line a distance of 178.90 feet; thence South 48° 42' 24" East continuing along said meander line a distance of 135.81 feet to a point on the North-South midsection line of said Section 17; thence South 1° 15' 53" West along said North-South midsection line a distance of 814 feet to the POINT OF BEGINNING.

For APN/Parcel ID(s): 38947010 0

Parcel D:

A portion of the Southwest Quarter of the Northeast Quarter and of the Boise River Channel as shown on the 1868 G.L.O. Survey Plat for Section 17, Township 5 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

BEGINNING at the Center Quarter for said Section 17; thence
North 1° 15' 53" East along the North-South midsection line of said Section 17 a distance of 814 feet to a point on the Westerly meander line for the mean highwater of the Boise River Channel as it now exists; thence
South 48° 42' 24" East along said meander line a distance of 211 feet; thence
South 59° 17' 28" East continuing along said meander line a distance of 203.99 feet; thence leaving said meander line and bearing
South 1° 15' 53" West a distance of 579.97 feet to a point on the East-West midsection line for said Section 17; thence
North 88° 24' 18" West along said East-West midsection line a distance of 339.21 feet to the POINT OF BEGINNING.

SUBJECT TO a 40-foot ingress-egress and utility easement along the South boundary.

For APN/Parcel ID(s): 38947011 0

Parcel E:

A portion of the Southwest Quarter of the Northeast Quarter and of the Boise River Channel as shown on the 1868 G.L.O. Survey Plat for Section 17, Township 5 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

COMMENCING at the Center Quarter corner for said Section 17; thence
South 88° 24' 18" East along the East-West midsection line for said Section 17 a distance of 339.21 feet to the TRUE POINT OF BEGINNING; thence
North 1° 15' 53" East a distance of 579.97 feet to a point on the Westerly meander line for the mean highwater of the Boise River Channel as it now exists; thence traversing said meander line as follows:
South 59° 17' 28" East a distance of 355.56 feet; thence
South 34° 01' 05" East a distance of 145.80 feet; thence
South 51° 14' 45" East a distance of 477.52 feet to a point on said East-West midsection line; thence
North 88° 24' 18" West along said midsection line a distance of 772.75 feet to the TRUE POINT OF BEGINNING.

This parcel includes use of an ingress-egress and utility easement described as follows:

BEGINNING at the Center Quarter corner of Section 17, Township 5 North, Range 5 West, Boise Meridian, Canyon County, Idaho; thence
North 1° 15' 53" East a distance of 40 feet; thence
South 88° 24' 18" East parallel with the East-West midsection line of said Section 17 a distance of 339.21 feet; thence
South 1° 15' 53" West a distance of 40 feet to said East-West midsection line; thence
North 88° 24' 18" West along said East-West midsection line a distance of 339.21 feet to the POINT OF BEGINNING

For APN/Parcel ID(s): 38947000 0

Parcel F:

A portion of Government Lots 5, 6 and 7 of the Southwest Quarter of the Southwest Quarter and of the Boise River Channel as shown on the 1868 G.L.O. Survey Plat for Section 17, Township 5 North, Range 5 West of the Boise Meridian, Canyon County, Idaho, and is more particularly described as follows:

COMMENCING at the West Quarter corner of said Section 17, as monumented by a brass cap monument; thence South 0° 43' 01" West along the West boundary of said Section 17 a distance of 8.09 feet to a point in the centerline of Boulder Road, said point being the TRUE POINT OF BEGINNING; thence South 88° 03' 58" East along said centerline a distance of 1,186.70 feet; thence South 50° 55' 56" East a distance of 791.25 feet; thence South 32° 56' 45" East a distance of 18.51 feet; thence North 88° 57' 28" West a distance of 388.10 feet; thence South 4° 59' 23" West a distance of 846.76 feet to a point in the centerline of the Ross East End Drain; thence traversing said centerline as follows:
 North 77° 44' 19" West a distance of 35.70 feet;
 North 74° 52' 58" West a distance of 367.83 feet;
 North 56° 53' 02" West a distance of 323.56 feet;
 North 54° 19' 35" West a distance of 389.54 feet;
 North 44° 32' 12" West a distance of 284.11 feet;
 North 29° 41' 45" West a distance of 123.38 feet;
 North 24° 24' 13" West a distance of 188.45 feet;
 North 0° 24' 55" West a distance of 206.63 feet;
 North 1° 44' 29" East a distance of 120.27 feet;
 North 45° 57' 48" West a distance of 49.67 feet to a point on the West boundary of said Section 17; thence North 0° 43' 01" East along said West boundary a distance of 40.62 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM

Any portion situated in the Southwest Quarter of the Southwest Quarter, Section 17, Township 5 North, Range 5 West, Boise Meridian in Canyon County, Idaho.

For APN/Parcel ID(s): 38947015 0 and 38947015A0

Parcel G and H:

A portion of Government Lots 6 and 7 and of the old original Boise River Channel as shown on the 1868 G.L.O. Survey of Section 17, Township 5 North, Range 5 West of the Boise Meridian, Canyon County, Idaho, and is more particularly described as follows:

BEGINNING at the Center Quarter corner for said Section 17; thence South 1° 13' 26" West along the North-South midsection line for said Section 17 a distance of 829.55 feet to a point in the centerline of Stephen Lane; thence traversing said centerline as follows:
 South 8° 36' 21" West a distance of 52.23 feet;
 South 12° 31' 59" West a distance of 336.85 feet;
 South 1° 50' 35" West a distance of 153.05 feet; thence leaving said centerline and bearing North 88° 37' 42" West a distance of 544.04 feet to the centerline of an existing ditch; thence traversing said centerline as follows:
 North 24° 56' 01" East a distance of 172.78 feet;
 North 5° 16' 08" West a distance of 249.04 feet;
 North 22° 27' 09" West a distance of 142.90 feet;
 North 32° 56' 45" West a distance of 406.37 feet;
 North 50° 55' 56" West a distance of 791.25 feet to a point in the centerline of Boulder Road; thence South 88° 03' 58" East along said centerline a distance of 150.55 feet to a point on the Northerly extension of the West boundary of said Government Lot 6; thence North 0° 58' 10" East along said extension a distance of 15.81 feet to the West One Sixteenth corner of said Section 17; thence

South 88° 23' 50" East along the East-West midsection line of said Section 17 a distance of 1,337.17 feet to the POINT OF BEGINNING.

For APN/Parcel ID(s): 38948010 0

PARCEL I:

A portion of Government Lot 7 and of the old original Boise River Channel as shown on the 1868 G.L.O. Survey for Section 17, Township 5 North, Range 5 West of the Boise Meridian, Canyon County, Idaho, and is more particularly described as follows:

COMMENCING at the South One Sixteenth corner for said Section 17; thence
South 1° 13' 26" West along the North-South midsection line of said Section 17 a distance of 56.49 feet; thence
North 88° 37' 42" West a distance of 74.43 feet to a point in the centerline of Stephen Lane, which point is the TRUE POINT OF BEGINNING; thence
South 1° 23' 36" East along said centerline a distance of 734.38 feet to a point on the Northerly boundary of the parcel described as the exception in the Warranty Deed filed as Instrument No. 9016492, records of Canyon County, Idaho; thence
North 72° 10' 51" West along said North boundary a distance of 490.41 feet; thence
South 59° 37' 01" West continuing along said boundary a distance of 50.93 feet to a point in the centerline of an existing ditch; thence traversing said centerline as follows:
North 2° 00' 54" East a distance of 93.55 feet;
North 29° 57' 11" West a distance of 175.54 feet;
North 10° 56' 14" West a distance of 142.23 feet;
North 4° 59' 48" East a distance of 133.13 feet;
North 24° 56' 01" East a distance of 115.82 feet; thence leaving said ditch centerline and bearing
South 88° 37' 42" East a distance of 544.04 feet to the TRUE POINT OF BEGINNING.

For APN/Parcel ID(s): 38947012 0

Parcel II:

A portion of Government Lot 3 and of the Boise River Channel as shown on the 1868 G.L.O. Survey Plat for Section 17, Township 5 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

COMMENCING at the center Quarter corner of said Section 17; thence
North 88° 23' 50" West along the East-West midsection line for said Section 17 a distance of 812.39 feet to the TRUE POINT OF BEGINNING; thence continuing
North 88° 23' 50" West along said midsection line a distance of 524.78 feet to a point on the Southerly extension of the West boundary of said Government Lot 3; thence
North 0° 59' 07" East along said extension and said West boundary a distance of 1,304.61 feet to the Northwest corner of said Government Lot 3; thence
South 88° 09' 59" East along the North boundary of said Government Lot 3 a distance of 834.38 feet to a point on the Westerly meander line for the mean highwater of the Boise River Channel as it now exists; thence traversing said meander line as follows:
South 29° 14' 03" East a distance of 145.19 feet; thence
South 67° 49' 07" East a distance of 106.09 feet; thence
South 42° 49' 39" East a distance of 155.08 feet; thence leaving said meander line and bearing
North 88° 09' 59" West a distance of 584.90 feet; thence
South 1° 12' 39" West a distance of 1,030.85 feet to the TRUE POINT OF BEGINNING.

Hersley, Jean

From: Michael P. Lawrence <mpl@givenspursley.com>
Sent: Wednesday, May 25, 2022 1:55 PM
To: Hersley, Jean; IDWR File
Cc: Keen, Shelley; nsemanko@parsonsbehle.com
Subject: RE: Green Head Ranch Settlement Agreement - Transfer Application 84986 [IWOV-GPDMS.FID1062931]
Attachments: 16205982_3_Settlement Agreement - FULLY EXECUTED AND NOTARIZED.PDF

Jean,

Attached is a copy of the fully executed Settlement Agreement between Green Head Ranch and Island Highline Ditch Company.

I call your particular attention to paragraph 1 on page 2 whereby Island Highline withdraws its protest to Green Head Ranch's Transfer Application No. 84986.

Please let me know if I need to arrange delivery of a hard copy of this to IDWR, or if this email suffices. (I have copied this email to IDWR's email filing address and included the contested case's identifying information in this email's caption, which I believe is all that is needed under new Rule of Procedure 53.b.)

Thanks,
Mike

MICHAEL P. LAWRENCE
GIVENS PURSLEY LLP

601 West Bannock Street, Boise, ID 83702
main 208-388-1200
direct 208-388-1294
fax 208-388-1300
mpl@givenspursley.com
www.givenspursley.com

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From: Michael P. Lawrence
Sent: Tuesday, May 24, 2022 4:52 PM
To: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>; nsemanko@parsonsbehle.com
Cc: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>
Subject: RE: Green Head Ranch Settlement Agreement [IWOV-GPDMS.FID1062931]

Jean,

I plan to file a fully executed settlement agreement with IDWR tomorrow. So I do not believe another status conference will be necessary.

Thanks for your patience.

-Mike

MICHAEL P. LAWRENCE

GIVENS PURSLEY LLP

601 West Bannock Street, Boise, ID 83702

main 208-388-1200

direct 208-388-1294

fax 208-388-1300

mpl@givenspursley.com

www.givenspursley.com

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From: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>

Sent: Tuesday, May 24, 2022 11:04 AM

To: Michael P. Lawrence <mpl@givenspursley.com>; nsemanko@parsonsbehle.com

Cc: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>

Subject: Green Head Ranch Settlement Agreement

EXTERNAL

The Department has not received the settlement agreement for the transfer filed by Green Head Ranch. The last correspondence received in April 2022 stated that the protestant had signed the agreement and are waiting for the applicant to sign. The hearing officer, Shelley Keen, is wondering if another status conference needs to be scheduled. Please let me know your availability if I need to schedule another status conference. Thank you.

*Jean Hersley
Technical Records Specialist II
Idaho Dept Water Resources
(208) 287-4942*