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WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR) **SETTLEMENT AGREEMENT**
TRANSFER NO. 82068 IN THE NAME OF)
IDAHO WATER COMPANY, LLC)
_____)

The United States of America ("Protestant"), DeRuyter Properties, L.P. ("Intervenor"), and Idaho Water Company, LLC ("Applicant") agree and stipulate to resolve the United States Department of Interior, Bureau of Land Management ("BLM") protest of Application for Transfer No. 82068 involving water right number 02-10017 on the terms and conditions set forth herein.

RECITALS

WHEREAS, the Applicant filed an Application for Transfer No. 82068 ("Application") on December 19, 2017 seeking to change the point of diversion and the place of use for a portion of water right no. 02-10017;

WHEREAS, the BLM has filed a protest of the Application because the proposed point of diversion ("POD") describes BLM land in T06S, R07E, S01, Lot 4 (NWNWNW);

WHEREAS, at the time of the protest an existing right-of-way ("ROW") numbered IDI-0-016775 existed at the proposed POD held in the BLM's records under the name of Robert C. Rhead, et al., that was issued under the Act of 1891 (26 Stat. 1101 (March 3, 1891), 43 U.S.C. 946, 951);

WHEREAS, the BLM recognizes, and has updated its records to reflect, that the ROW

currently is held by the Intervenor;

WHEREAS, the Applicant has no legal interest in or to the ROW;

WHEREAS, the BLM wishes to ensure that Application for Transfer No. 82068, if approved, authorizes the Intervenor rather than the Applicant to convey the transferred portion of water right no. 02-10017 through the existing ROW;

WHEREAS, the Idaho Department of Water Resources' presiding officer in the above-captioned matter has indicated he will, upon receipt of this fully executed settlement agreement, review this settlement agreement under Department Rule of Procedure 612, IDAPA 37.01.01.612, and if it is acceptable to the Department he will issue an interlocutory order under Department Rule 710, IDAPA 37.01.01.710, committing to issue a preliminary order approving the Application in Intervenor's name, and in the form attached hereto as Exhibit A if within thirty (30) days of the interlocutory order, the Department receives a Notice of Change in Water Right Ownership and supporting documentation demonstrating that the transferred portion of water right no. 02-10017 (which IDWR has assigned the water right no. 2-10567) is owned by Intervenor; and

WHEREAS, the Protestant, Intervenor, and the Applicant wish to resolve their dispute regarding Application for Transfer No. 82068 pursuant to the process described above.

STIPULATION

THEREFORE, in consideration of the foregoing recitals, the Protestant, Intervenor, and the Applicant stipulate and agree as follows:

1. Upon IDWR approval of the Application, the transferred portion of water right no. 02-10017 (which IDWR has assigned the water right no. 2-10567) will be in the form attached hereto as Exhibit A except that the right holder shall be Intervenor.

2. The following conditions shall be placed on any approval of Application for Transfer No. 82068:

(a) "This right does not grant any right-of-way or easement across the land of another."

(b) "This right does not create a new property right in Federally managed lands."

3. The Parties shall not further contest the Application or any orders approving the Application if the Application is approved pursuant to the process described in the penultimate recital above and in the form described in paragraph 1 above.

4. The preceding Recitals are true and correct and are incorporated herein by reference.

5. The Protestant hereby withdraws its protest upon acceptance, approval and adoption of this Agreement by IDWR in its entirety.

6. The undersigned acknowledge that they have full authority to enter into this settlement agreement on behalf of the respective parties.

[end of text, signature page follows]

Respectfully submitted,

APPLICANT:

Idaho Water Company, LLC,
an Idaho limited liability company


Delbert G. Kohtz Date 8/13/18
Managing Member
Idaho Water Company, LLC

PROTESTANT:

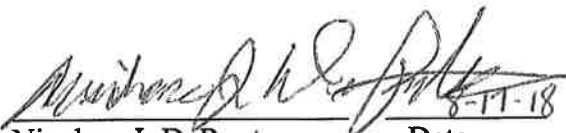
U.S.D.I., Bureau of Land Management


Fredric W. Price Date 08/13/2018
Water Rights Specialist
U.S. Department of the Interior
Bureau of Land Management

INTERVENOR:

DeRuyter Properties, L.P.,
an Idaho limited partnership

By: DeRuyter Dairy, LLC,
an Idaho limited liability company,
its general partner


Nicolaas J. DeRuyter Date 8-11-18
Manager, DeRuyter Properties, L.P.

CERTIFICATE OF SERVICE

I certify that on August 30, 2018, I served a true and correct copy of foregoing **Settlement Agreement; Application for Transfer No. 82068** upon the following individuals by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Nick Miller, P.E., Regional Manager
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, Idaho 83705-5082

Copies to:

Kevin G. Kohtz, attorney
P.O. Box 191190
Boise, Idaho 83719
REPRESENTING:
Idaho Water Company, LLC

Michael P. Lawrence, attorney
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
REPRESENTING:
DeRuyter Properties, L.P.

Lori Graves
SPF Water Engineering, LLC
300 East Mallard Drive, Suite 350
Boise, Idaho 83706-6660
CONSULTING:
Idaho Water Company, LLC

Scott W. Hulbert, attorney
U.S.D.I., Office of the Solicitor
Boise Field Office
960 Broadway Avenue, Ste. 400
Boise, Idaho 83706

James "Al" Tarter, Natural Resource Specialist
Kyle Paffett, Hydrologist
Becky Lazdauskas, Supervisory Realty Specialist
U.S., Department of the Interior
Bureau of Land Management
Four Rivers Field Office
1405 Hollipark Drive
Idaho Falls, Idaho 83401-2100


Person serving documents

EXHIBIT A

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DRAFT

WATER RIGHT NO. 2-10567

As Modified by Transfer No. 82068

In accordance with the approval of Transfer No. 82068, Water Right No. 2-10567 is now described as follows:

Right Holder:

DALE VAN ES
JACKIE VAN ES
8222 DESERT DR
MARSING, ID 83639

*UPDATE To Deluxter
When notice of ownership Chg. Received.*

Priority Date: 12/4/1983

Source: SNAKE RIVER

Tributary: COLUMBIA RIVER

BENEFICIAL USE

IRRIGATION

From

03/15

To

to 11/15

Diversion Rate

1.980 cfs

1.980 cfs

Diversion Volume

675.0 af

675.0 af

LOCATION OF POINT(S) OF DIVERSION

SNAKE RIVER

L4 (NWNW)

Sec 1 Twp 06S Rge 07E ELMORE County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05S	07E	36		30.0			40.0	40.0	40.0										150.0

POU Total Acres: 150.0

CONDITIONS OF APPROVAL

1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre ~~per acre~~ *2m 8/10/15*
~~than 4.0 af per acre~~ at the field headgate for irrigation of the place of use.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
3. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 02.
4. This right does not grant any right-of-way or easement across the land of another.
5. This right does not create a new property right in Federally managed lands.
6. This right is a combination of old right nos. 2-2249, 2-2250, 2-2252, 2-2253, 2-2254, 2-2255 and 2-2256.

Transfer No. 82068

DRAFT

WATER RIGHT NO. 2-10567
As Modified by Transfer No. 82068

CONDITIONS OF APPROVAL

7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Transfer No. 82068