

After Recording Return to:
Targhee Hill Estates LLC
1777 Sun Peak Dr.
Park City, UT 84098

202354 JAN 16 '09 AM 9 50

Instrument # 202354

TETON COUNTY, IDAHO

1-16-2009

09:50:00 No. of Pages: 5

Recorded for: TARGHEE HILL ESTATES

MARY LOU HANSEN

Fee: 15.00

Ex-Officio Recorder Deputy

Index to: AGREEMENT

Goffel

SETTLEMENT AGREEMENT FOR APPLICATION FOR TRANSFER NO. 74119

This SETTLEMENT AGREEMENT is made this 12 day of November, 2008, by and between FREMONT-MADISON IRRIGATION DISTRICT, an irrigation district organized under the laws of Idaho with a mailing address of P. O. Box 15, St. Anthony, ID 83445-0015 ("FMID") and TARGHEE HILL ESTATES LLC, a Delaware limited liability company with its principal place of business located at 1777 Sun Peak Dr., Park City, UT 84098 ("Developer").

RECITALS

A. Developer is the owner of Targhee Hill Estates, a subdivision near Driggs, Idaho (the "Subdivision"), situated on the property described in Exhibit "A," and the applicant for Application for Transfer No. 74119 ("Transfer") filed with the Idaho Department of Water Resources ("IDWR"), an application to develop four small ponds (the "Ponds") as part of the Subdivision.

B. The Transfer seeks to account for filling and evaporation of water for the Ponds. The Ponds will be used (1) to store irrigation water to irrigate the yards of the homes in the Subdivision and the common areas throughout the irrigation season, April 15 to October 31 of each year; and (2) for aesthetic storage from January 1 to December 31 each year. Water to fill the Ponds is made available under Idaho Permit Nos. 22-13630 and 22-13628 (the "Permits"). Prior to the development of the Subdivision and filing of the Transfer, the Permits irrigated 80 acres of land on which the Subdivision is located. The amount of water being transferred to storage from the Permits is 0.15 cfs or 13.8 acre feet annually.

C. The water made available under the Permits originates in Wyoming, is delivered to lands in Idaho as a deduction from Wyoming's allocation of water under the Roxana Decree, Roxana Canal Co. v. Daniels, Equity No. 2447 (D. Wy. Feb. 4, 1941), and is turned into the Waddell Ditch in Wyoming by the Wyoming River Commissioner upstream of the point where

the water enters Idaho. The Developer diverts the water onto the Subdivision property from the Waddell Ditch.

D. FMID filed its protest to the Transfer on March 17, 2008 claiming that approval of the Application would impact and/or injure its water rights and electors.

E. On August 6, 2008, the parties and their counsel attended a Pre-Hearing Conference in the offices of the IDWR at which a settlement in principle was reached.

F. The parties now wish to settle FMID's protest to the Transfer by executing this binding Settlement Agreement and requesting that its terms be referenced in the approval of the Transfer by the IDWR.

NOW THEREFORE, in and for the mutual promises of the parties and other good and valuable consideration, the parties agree as follows:

AGREEMENT

1. Developer will divert water from the Waddell Ditch to the Subdivision only during the periods during the irrigation season when normal irrigation diversions from the Waddell Ditch are occurring in the immediate area.

2. Developer will limit diversion to 1.32 cfs for Permit No. 22-13630, with 0.1 cfs being transferred to storage under the Transfer and 1.22 cfs remaining for irrigation; and 0.61 cfs for Permit No. 22-13628, with 0.05 cfs being transferred to storage under the Transfer and 0.56 remaining for irrigation. Collectively, the Permits after the Transfer are limited to the irrigation of 73.7 acres and storage in the Ponds.

3. Developer's depletion from the use of the Ponds will not exceed 13.8 acre feet annually.

4. Developer shall install a control structure at each of the locations on the Waddell Ditch where the water enters the Subdivision for diversion and storage in the Ponds under the Transfer to accomplish the purposes of this Agreement, which insures that water shall not be diverted into the Ponds at times not authorized by this Agreement. Developer shall mark the location of the control structures on a map of the Subdivision, which map shall be appended to this Agreement as Exhibit "B." Developer will provide a copy of this Agreement, including the map, to the IDWR pursuant to paragraph 6 hereof for filing in the Transfer file.

5. Developer will measure the amount of storage in the Ponds at the beginning of the irrigation season prior to diverting water into them, and again at the end of the irrigation season when diversions into them have ceased. Developer will provide the measurements and the dates diversions into the Ponds began and ceased to FMID annually. Developer will provide this information to the Department or its designated watermaster upon request.

6. Applicant will record this fully executed Agreement in the office of the Teton County Clerk, Auditor and Recorder and send a copy with the recording information endorsed thereon to the Department and FMID.

7. FMID hereby withdraws its protest to the Transfer conditioned upon IDWR's reference to this Settlement Agreement in the approval of the Transfer.

8. This Agreement shall be binding on the parties and their respective heirs, legal representatives, agents, successors in interest and assigns and shall inure to the benefit of such persons.

9. Each party agrees to cooperate with the other in preparing and filing the necessary documents, or taking other actions, to properly achieve the purposes of this Settlement Agreement.

EXECUTED on the date first above written.

FREMONT-MADISON IRRIGATION DISTRICT

George M. Crapo

By: Jeffrey D. Ransom

Its: Chairman

Attest: _____

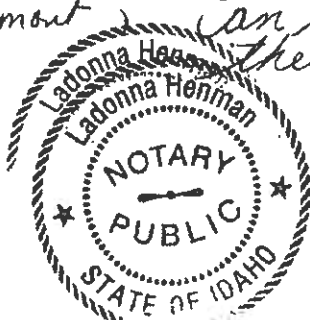
STATE OF IDAHO)

COUNTY OF Fremont)

ss.

The foregoing instrument was acknowledged before me this 12 day of November 2008 by George Crapo, the Secretary of Fremont-Madison Irrigation District, an irrigation district organized under the laws of Idaho

Ladonna Henman



The foregoing instrument was acknowledged before me this 12 day of November, 2008 by, Jeffrey D. Raybould, the Chairman of Fremont-Madison Irrigation District, an irrigation district organized under the laws of Idaho.



Ladonna Henman

TARGHEE HILL ESTATES LLC

By: [Signature]
Michael D. Stewart, Manager

STATE OF UTAH)
SS.
COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 4th day of November, 2008 by, Michael D. Stewart, Manager of Targhee Hill Estates, LLC, a Delaware limited liability company.

Judi L. Rouse

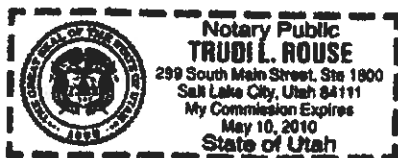


EXHIBIT "A"

Targhee Hill Estates

Township 5 North, Range 46 East, Boise Meridian, Teton County, Idaho.

Section 20: SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Also: Beginning at the Northeast Corner of Lot 4 of said Section 20; thence West 148 Rods; thence South 80 Rods; thence East 30.5 Rods; thence North 17.5 Rods; thence East 117.5 Rods; thence North 62.5 Rods to the point of Beginning.

Less and excepting therefrom the existing county road right-of-way along the East boundary of the above described property.