

RECEIVED
SEP 01 2009
Department of Water Resources

WATER RIGHTS AGREEMENT

THIS AGREEMENT is made by, between, and among the DRY CREEK RURAL NEIGHBORHOOD ASSOCIATION, an unincorporated association, 6411 W. Dry Creek Road, Boise, Idaho 83714, hereinafter referred to as "DCRNA", and JMM Dry Creek, LLC, 2301 N. Akard #200, Dallas, Texas 75201, hereinafter referred to as "JMM".

WITNESSETH:

WHEREAS, JMM holds water rights from ground water (63-2535, 63-4023B, 63-4086B, and 63-7123) and from Dry Creek (63-17454), to irrigate up to 392 acres. These water rights are more particularly described by Partial Decrees in Exhibit A hereto; and

WHEREAS, the historic consumptive use from the above five water rights has not been determined; and

WHEREAS, aquifer sustainability and the potential for injury to existing ground water users have not been determined if depletions to the aquifers in the Dry Creek area are increased from historic amounts; and

WHEREAS, actions by other users, not directly under the control of JMM or DCRNA, may impact ground water levels in the Dry Creek area; and

WHEREAS, JMM has filed Ground Water Right Application 63-32423, Exhibit B hereto ("Application 63-32423"), whose place of use is real property in Ada County, Idaho, more particularly described by legal description and map as the Dry Creek Ranch Planned Community in Exhibit B; and

WHEREAS, Application 63-32423 is for 5.0 cfs (cubic feet per second) for municipal purposes for current beneficial needs within the next five years; and

WHEREAS, the diversion rate and volume of Application 63-32423 are not to exceed 7.84 cfs and 1764 AFA (acre-feet per annum) in combination with Water Rights 63-7123, 63-4086B, 63-17454, 63-4023B, and 63-2535; and

WHEREAS, withdrawal of ground water under Application 63-32423 is limited to the target water bearing zone from 100 to 300 feet below land surface; and

WHEREAS, Application 63-32423 does not provide for export of water from the Dry Creek Ranch Planned Community; and

WHEREAS, DCRNA has protested JMM's Application 63-32423; and

WHEREAS, JMM has filed Application for Transfer 73817 (Exhibit C hereto) to change point of diversion, add diversion points, and change place of use of the following water rights:

| Right Number | Priority | Amount | | Nature of Use | Period of Use |
|--------------|-----------|--------|--------|---------------|---------------|
| | | CFS | AFA | | |
| 63-7123 | 7/11/1968 | 0.79 | 1615.5 | Irrigation | 4/1 to 10/31 |
| 63-4086B | 7/20/1960 | 5.0 | 1615.5 | Irrigation | 3/1 to 11/15 |
| 63-17454 | 3/20/1938 | 1.7 | | Irrigation | 3/1 to 11/15 |
| 63-4023B | 7/01/1927 | 3.0 | 810.0 | Irrigation | 3/1 to 11/15 |
| 63-4023B | 7/01/1927 | 0.04 | | Stockwater | 1/1 to 12/31 |
| 63-2535 | 8/24/1937 | 0.7 | 157.5 | Irrigation | 3/1 to 11/15 |
| 63-2535 | 8/24/1937 | 0.02 | | Domestic | 1/1 to 12/31 |

and

WHEREAS, the total amount of water under Transfer 73817 is not to exceed 7.84 cfs / 1764 AFA in combination for 392 acres within a 739-acre permissible place of use, the Dry Creek Ranch Planned Community described in Exhibit B hereto; and

WHEREAS, any references to "export" of water refer to export from the Dry Creek Ranch Planned Community identified in Exhibit B; and

WHEREAS, net export of ground water from the Dry Creek Ranch Planned Community is not anticipated after development of the Dry Creek Ranch Planned Community; and

WHEREAS, technical reports prepared for JMM by SPF Water Engineering, LLC, in support of the Dry Creek Ranch Planned Community and preliminary plat applications on file with Ada County and other regulatory agencies, more particularly described in Exhibit D hereto, will be submitted to IDWR to evaluate Application 63-32423 and Transfer 73817; and

WHEREAS, any approval by IDWR of Application 63-32423 or Transfer 73817 made by JMM, its agents or assigns, may reference this Agreement, but the Agreement will be effective whether or not referenced in such approvals; and

WHEREAS, the administration of the ground water resources in the Dry Creek area under the priority of rights system is not affected by this Agreement (priority calls can be entered if injury is occurring to earlier priority rights, even if the parties are in compliance with the Agreement); and

WHEREAS, the parties desire to resolve matters relating to Application 63-32423 and Transfer 73817.

NOW, THEREFORE, in consideration of mutual terms and conditions set forth hereinafter, DCRNA and JMM agree as follows:

1. JMM will:

(A) implement the Well Monitoring and Abandonment Plan more particularly described in Exhibit E hereto. The monitoring plan will include six private wells (DCRNA and non-DCRNA owned), more particularly described in Exhibit F.

(B) not develop a public water supply from the low temperature-geothermal zones.

(C) use Dry Creek Ranch Planned Community generated treated wastewater and Dry Creek surface water first for irrigation, to the extent available, on lands served by the Dry Creek Ranch Planned Community non-potable irrigation system. This condition does not bind JMM to utilizing treated wastewater for irrigation of the Dry Creek Ranch Planned Community.

(D) on an interim basis, limit diversions from ground water for municipal purposes to 70% of potential municipal diversion volume until information from the monitoring program is available to show that diversions do not result in chronic water level declines and resultant injury to existing water rights. Interim maximum annual diversion volume for municipal purposes under Permit No. 63-32423 is calculated by subtracting the irrigation water diversion from ground water (under 63-7123, 63-4086B, 63-4023B, and 63-2535) and Dry Creek (under 63-17454), but not including treated wastewater used for irrigation, in that year (January 1 to December 31) by Dry Creek Ranch Planned Community from 1764 acre feet and multiplying the remainder by 0.70.

(E) provide notice to DCRNA of requests filed with IDWR to determine if data for diversion volume, water levels and estimated depletions from the aquifer indicate that the annual diversion volume limit can be increased above the interim level herein established. Such requests will not to be filed more frequently than every three years with the initial review period beginning upon issuance of Permit No. 63-32423.

2. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement, and their heirs, devisees, assigns, personal representatives, and successors. Upon its signing, this Agreement shall be recorded in Ada County. The covenants and agreements herein contained shall run with the land associated with Water Right Nos. 63-2535, 63-4023B, 63-4086B, 63-7123, and 63-17454, and to any land to which Water Right Nos. 63-2535, 63-4023B, 63-4086B, 63-7123, and 63-17454 are subsequently transferred, and to the land associated with any successor water rights split from these water rights. If any portion or all of these water rights is transferred to other lands, the respective parties shall record this Agreement in the applicable county within an indication that the covenants and agreements herein contained run with such lands.

The covenants and agreements herein contained shall run with the land associated with Application 63-32423 and to any land to which Application 63-32423, Permit 63-32423, or License 63-32423 is assigned or subsequently transferred, and to the land associated with any successor applications, permits, or licenses split from Application 63-32423, Permit 63-32423, or License 63-32423. If any portion or all of Application 63-32423, or any successor water right applications, permits, or licenses is transferred to other lands, the respective parties shall record this Agreement in the applicable county with an indication that the covenants and agreements herein contained run with such other lands.

3. Upon the recording of this Agreement, DCRNA shall immediately withdraw its protest against Application 63-32423 by executing and filing with the Idaho Department of Water Resources (IDWR) a notice of withdrawal of protest. A copy of the notice of withdrawal of protest is attached as Exhibit G hereto, and is incorporated herein by reference as if set forth in full.

4. Upon the recording of this Agreement, DCRNA will not protest pending Application for Transfer 73817.

5. DCRNA will make its wells available for JMM monitoring in accordance with the JMM Monitoring Plan. The six wells that DCRNA has chosen for the Monitoring Plan are listed in Exhibit F hereto.

6. DCRNA will support incorporation of the Dry Creek Ranch Planned Community as particularly described in Exhibit B hereto, into United Water Idaho's certificated service area.

7. If either party seeks the services of an attorney for the enforcement of any provision of this Agreement, the prevailing party shall have the right to reimbursement of attorney fees and costs, both as to trial and on appeal.

8. This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of Idaho.

9. Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, or by facsimile. Notice shall be provided to the following:

DCRNA: Leslie Nona, Chairperson
6411 W. Dry Creek Road
Boise, ID 83714
Fax – (208) 381-1670

Marian E. Shaw
13975 Broken Horn Road
Boise, ID 83714
Fax – (208) 229-3122

JMM Dry Creek LLC: Richard Tettamant
Manager
c/o Land Baron Investments
5275 S. Durango Drive
Las Vegas, NV 89113
Fax – (702) 851-3998

Terry Scanlan
SPF Water Engineering, LLC
600 East River Park Lane, Suite 105
Boise, ID 83706
Fax – (208) 383-4156

10. If any provision of this Agreement is held to be invalid, illegal, unconscionable or unenforceable in any respect, such shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, unconscionable or unenforceable provision had never been included herein, all other terms and provisions remaining effective and in force to the fullest extent permitted by law.

11. The failure of a party to insist, in any one or more instances, upon strict performance of any term, covenant or condition of this Agreement or in any instrument or document referred to herein or contemplated hereby, or to exercise any option contained herein, shall not be construed as a waiver, or a relinquishment for the future, of such term, covenant, condition or option, but the same shall remain and continue in full force and effect.

12. The parties may at any time hereafter modify or amend this Agreement by a subsequent written agreement executed by the parties. This Agreement shall not, however, be changed orally, nor shall it be deemed modified in any way by the act of any of the parties hereto. Nothing herein is intended, nor shall it be construed, as obligating either party to agree to any modification to this Agreement.

13. This Agreement and the instruments and documents referred to herein or contemplated hereby constitute the entire agreement between the parties concerning the subject matter of this Agreement. There are no oral or parol agreements existing between

JMM DRY CREEK, L.L.C.,
a Texas limited liability company

By: Richard L. Tettamant

Richard Tettamant

Its: Manager

STATE OF Texas)
County of Dallas) ss:

On this 14th day of ^{January 2009} ~~December 2008~~, personally appeared before me Richard Tettamant, to me known to be the Manager of JMM Dry Creek L.L.C., the entity described in and who executed the within and foregoing instrument, and he acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

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



Carol S. Huffman
Notary Public in and for the State of Texas
Residing at Dallas TX
My commission expires 11-03-11

EXHIBITS TO DCRNA/JMM WATER RIGHTS AGREEMENT

- Exhibit A JMM water rights from ground water (63-2535, 63-4023B, 63-4086B, and 63-7123) and from Dry Creek (63-17454) to irrigate up to 392 acres
- 1) SRBA Partial Decree 63-2535 (April 11, 2007)
 - 2) SRBA Partial Decree 63-4023B (April 11, 2007)
 - 3) SRBA Partial Decree 63-4086B (April 11, 2007)
 - 4) SRBA Partial Decree 63-7123 (April 11, 2007)
 - 5) SRBA Partial Decree 63-17454 (April 11, 2007)
- Exhibit B August 22, 2006 JMM Application for Permit 63-32423 filed at the Idaho Department of Water Resources, Western Regional Office, Boise, Idaho
- Exhibit C IDWR transfer 73817: January 19, 2007 JMM Dry Creek, LLC's Application for Transfer of Water Rights 63-2535, 63-4023B, 63-4086B, 63-7123, and 63-17454 filed at the Idaho Department of Water Resources, Western Regional Office, Boise, Idaho.
- Exhibit D Technical reports and preliminary plat applications and reports to be submitted to IDWR to evaluate Application 63-32423 and Transfer 73817
- 1) SPF Water Engineering, LLC's investigation of Julius Jeker's property (May 17, 2005) (approximately 262 pages, including Attachments A-M)
 - 2) SPF's Conceptual Water System Report (July 18, 2006) (including Appendices A-G)
 - 3) Jeker's Place Ranch Subdivision Preliminary Plat and Hillside Development application submitted to Ada County on January 12, 2007 and accepted by Ada County on April 14, 2007.
 - 4) Ada County Staff Report, with exhibits, for Jeker's Place Ranch Preliminary Plat and Hillside Development prepared for the Planning and Zoning Commission dated May 22, 2008.
- Exhibit E SPF Dry Creek Aquifer Monitoring Plan & Well Abandonment plan with Nov 2008 revised Table 1 (April 9, 2008)

Exhibit F List (and detailed data for each) of the six DCRNA member wells to be monitored in accordance with SPF Dry Creek Aquifer Monitoring Plan (April 9, 2008) (Exhibit E). The last page of Exhibit F lists the 13 additional DCRNA wells that IDWR is monitoring.

Well #1: Podolan
Well #2: Johnston
Well #3: Kozłowski
Well #4: Irringer
Well #5: Echanove Ranch No. 1
Well #6: Rishel

Exhibit G DCRNA Notice of Withdrawal of Protest (draft to be executed in final upon recording of the executed DCRNA/JMM Agreement)