

Instrument # 202746

TETON COUNTY, IDAHO

2-5-2009

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Recorded for: CREEKSIDE MEADOWS

MARY LOU HANSEN

Fee: 12.00

Ex-Officio Recorder Deputy

Index to AGREEMENT

File

202746 FEB 5 '09 #11139

After Recording Return to:
D Diamond Ranch Home Owners Association Inc.
P.O. Box 1170
Wilson, WY 83014

SETTLEMENT AGREEMENT FOR APPLICATION FOR TRANSFER NO. 74684

This SETTLEMENT AGREEMENT is made this 26 day of January, 2009
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 D DIAMOND RANCH HOME OWNERS ASSOCIATION INC., of
1230 Ida Lane, Wilson, WY 83014 ("HOA").

RECITALS

- A. HOA is the applicant for Application for Transfer No. 74684 ("Transfer") filed with the Idaho Department of Water Resources ("IDWR"), an application to develop two small ponds (the "Ponds") as part of the Subdivision.
- B. The Transfer seeks to account for filling of the Ponds. A companion Transfer (#74685) provides water from a ground water source for evaporation from the ponds. The Ponds will be used for aesthetic, wildlife, and fire protection storage from January 1 to December 31 each year. Water to fill the Ponds is made available under Idaho water right Nos. 22-600 and 22-601 (the "rights"). Prior to the development of the Subdivision and filing of the Transfer, the Permits irrigated 143 acres of land on which the Subdivision is located. The amount of water being transferred to storage from the Permits is 0.14 cfs or 13.3 acre feet annually.
- C. The water made available under the rights originates in both Idaho and Wyoming. Water diverted 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 Hog Canal in Wyoming by the Wyoming River Commissioner upstream of the point where the water enters Idaho.

D. FMID filed its protest to the Transfer on September 2, 2008 claiming that approval of the Application would impact and/or injure its water rights and electors.

E. On September 19, 2008, Rocky Mountain Environmental Associates Inc. (RMEA), in behalf of HOA sent a letter to FMID explaining the circumstances of the transfers for the purpose of resolving the protest.

F. On October 22, 2008, RMEA met with FMID at their offices in St Antony, Idaho at which a settlement in principle was reached.

G. 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 Desert Ditch and Hog Canal to the Subdivision only during the periods during the irrigation season when normal agricultural irrigation diversions from the Desert Ditch and Hog Canal are occurring in the immediate area.

2. Developer will limit diversion to 0.60 cfs for Water Right No. 22-600, with 0.03 cfs being transferred to storage under the Transfer and 0.57 cfs remaining for irrigation; and 2.60 cfs for Water Right No. 22-601, with 0.11 cfs being transferred to storage under the Transfer and 2.49 remaining for irrigation. Collectively, the Water Rights after the Transfer are limited to the irrigation of 136.9 acres and storage in the Ponds.

3. Developer's depletion from the use of the Ponds will not exceed 13.3 acre feet annually.

4. Approval of Transfer 74684 anticipates the companion approval of Transfer 74685. If Transfer 74685 is not approved, then the following shall take place:

i. Developer shall install a control structure at each of the locations on the Desert Ditch and Hog Canal 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 "A." 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.

- ii. 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.

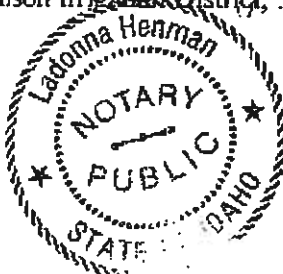
FREMONT-MADISON IRRIGATION DISTRICT

By: [Signature]
Its: Chairman

Attest: _____

STATE OF IDAHO)
COUNTY OF Fremont ss.

2009 The foregoing instrument was acknowledged before me this 5 day of January
2008 by, Jeff Rayson, the Chairman of Fremont-
Madison Irrigation District, an irrigation district organized under the laws of Idaho.



Ladonna Henman

D DIAMOND RANCH HOME OWNERS
ASSOCIATION INC

By: [Signature]
Bruce Simon, Manager

STATE OF WYOMING)
COUNTY OF) ss.

The foregoing instrument was acknowledged before me this 27 day of January
2008 by, Amanda M. Piercy, Bruce Simon of D DIAMOND RANCH
HOME OWNERS ASSOCIATION INC

Amanda M. Piercy

