

Counterproposal

1. Option 1:

A. HOA/Developer removes the pump house, equipment and all piping off of Bailey's property and relocates the system to another location. HOA/Developer to pay to repair any damage resulting to the Bailey's property, including fencing, as a result of the removal of the pump house, equipment and piping. The Bailey's property would have to be restored to its original condition; and

B. HOA/Developer to either:

(i) Fill in the pond with appropriate materials, including pit run, gravel and top soil. Water in pond needs to be drained prior to pond being filled in. After pond filled in, it would need to be compacted, using proper compaction equipment, to prevent sinkage and to ensure that the work is done in a workmanlike manner and to ensure that the Bailey's could build a structure upon the pond. Pond excavation work to be warranted by the HOA/Developer/Subcontractor. The Bailey's must consent to the subcontractor to be employed to fill in the pond, which consent shall not be unreasonably withheld. The HOA/Developer is to pay all costs associated with filling in the pond. Completion of filling in and compacting the pond no later than November 15, 2005. Any damage resulting to Bailey's property or fencing from use of heavy equipment in filling in the pond to be repaired at the expense of the HOA/Developer; or

(ii) HOA/Developer to obtain or purchase 2 acres of ground water rights in favor of the Baileys. This can be accomplished either by the HOA/Developer purchasing 2 acres of existing ground water rights from a third party in favor of the Baileys or through a transfer or exchange of surface water rights from the Developer or canal company in exchange for ground water rights in favor of the Baileys and subject to written approval by the Idaho Department of Water Resources. The HOA/Developer will be responsible for completing all of the necessary paperwork and complying with the Department of Water Resource requirements to complete and perfect the purchase and transfer of 2 acres of ground water rights in favor of the Baileys. The Department of Water Resources has indicated to the Baileys that there is approximately an 18 month to two year hold on the processing of applications of transfers/exchanges of surface water rights for ground water rights. In this case, the HOA/Developer would need to file an appropriate transfer/exchange application with the Department of Water Resources and obtain temporary approval from the Department for the Baileys use of the ground water in the pond and written assurance that the Department would not treat any diversion of ground water as an illegal diversion pending the Department of Water Resource's final approval of the transfer/exchange application. If, for any reason, the Department of Water Resources does not permanently approve the transfer/exchange of surface water rights for 2 acres of ground water rights in favor of the Baileys, then the HOA/Developer would need to purchase 2 acres of ground water rights from a third party in favor of the Baileys. If the Department does not approve that transfer of third-party ground water rights in favor of the Baileys or, if for any reason, the HOA/Developer is

unable to purchase or otherwise obtain and transfer 2 acres of ground water rights in favor of the Baileys, then the HOA/Developer will be responsible for filling in the pond under the terms set forth in Paragraph 1(B) (i) above. The Baileys, as members of the HOA, will continue to be part of any newly created HOA pressurized irrigation system.

2. Option 2: HOA/Developer to fill in the pond as set forth in Paragraph 1(B) (i) above. The pump house can remain on the Bailey's property and the Baileys will grant the HOA an easement to run underground piping on their property from the pump house to the canal for purposes of the community pressurized irrigation system. The location of the easement and piping will need to be agreed upon by the Baileys. The piping shall not run dead center across Bailey's property or interfere with their ability to build a structure in the center of the back part of their property. The HOA/Developer shall pay for the costs of installing any additional piping to run the system underground to the canal. The canal shall be the source of the irrigation water. The HOA/Developer shall pay the costs of repairing any damage resulting to the Baileys' property, including fencing, in modifying the system and running underground piping from the pump house to the canal. The HOA shall be responsible for maintaining the system and the easement so as not to damage the value of the Baileys' property. If future repairs need to be done on any party of the system, including piping, that results in damage to any portion of the Baileys property, including that portion of the Baileys' property subject to the easement, the HOA shall pay the costs of repairing and restoring the Baileys' property to the condition it was in prior to such damage. If at anytime the HOA needs to access the Baileys property for work on the irrigation system, they shall give the Baileys at least 24 hours prior notice. The HOA shall form an irrigation committee to handle issues pertaining to the pressurized irrigation system. Since the system will be located on the Baileys' property, the Baileys, or any subsequent owner of the property, shall be permanent members of the irrigation committee.

3. Option 3: The HOA/Alan Mills have estimated that it will cost approximately \$13,600 to relocate the pump house, equipment and all underground piping off of the Baileys' property to another location and to reinstall a new HOA pressurized irrigation system at a different location. Alan Mills has offered to pay the cost of removing and relocating the pump house, equipment and all piping to another location and install a new HOA pressurized system. Rather than removing the pump house, equipment and all underground piping from the Baileys' property to a new location, the HOA can leave the pump house, equipment and piping on the Baileys' property (and release any purported ownership interest therein) and instead use the money to purchase new equipment and build a new pump house at another location. The cost for simply purchasing and installing a new pump house and equipment should be relatively the same as the cost of removing and relocating the existing pump house, equipment and piping to a new location. All of the main line piping and piping running to each parcel could remain in place and can be capped off at the Southeast corner of the Baileys' property. The HOA can take the money that it will cost to relocate the pump house, equipment and piping and reinstall a new system at another location. The only cost incurred would be to purchase a pump and control panel and to build a pump house (optional) and run that equipment from the new location to the canal. The HOA will not

have any responsibility with respect to the ground water pond located on the Baileys' property. Subject to the Baileys being able to purchase and obtain ground water rights for the existing pond on their property and obtain approval of the Department of Water Resources, the Baileys would not be part of the HOA pressurized irrigation system nor have any monetary responsibility for such system. If the Baileys are unable to purchase ground water rights and obtain approval from the Department of Water Resources, the Baileys would be part of the community pressurized irrigation system and share in the pro rata costs of maintaining such system.

Any settlement agreement reached by the parties shall be memorialized by a written agreement and subject to necessary releases, amendments/modifications of CC&R's and execution of any other legal documents necessary to effectuate the parties' intent.