

Cox, Sharla

From: aaron.fmid@myidahomail.com
Sent: Tuesday, May 28, 2019 9:09 AM
To: Cox, Sharla; Cefalo, James
Cc: 'Jerry Rigby'; 'Mandy Davis'
Subject: Teton Farms I Signed MOU and Withdrawal of Protest
Attachments: Teton Farms I LLC Signed MOU.pdf; withdrawal-of-protest-signed.pdf

Hi Sharla and James,

Please find a withdrawal of protest on Teton Farms I and the signed MOU agreement.

Let me know if you have any questions.

Thanks,

Aaron Dalling
Fremont-Madison Irrigation District
Email:aaron.fmid@myidahomail.com
Office:(208)624-3381
Cell:(208)403-8474

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WITHDRAWAL OF PROTEST

Application for ☒ Transfer ☐ Permit ☐ Amendment of Permit No. 82591

In the Name of Teton Farms I LLC
Applicant

Name of Protestant: Fremont-Madison Irrigation District

Represented by: Rigby, Andrus & Rigby PLLC

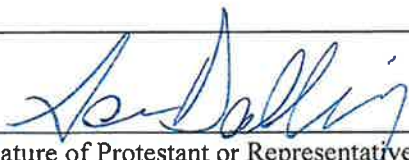
I hereby withdraw my protest to the above referenced matter. All of my issues of protest have been addressed and/or resolved.

☐ My withdrawal is not conditional.

Or

☒ My withdrawal is conditioned on the following:

Our withdrawal is conditioned on an MOU agreement (Attached)

	<u>Executive Director</u>	<u>5-28-19</u>
Signature of Protestant or Representative	Title	Date

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between FREMONT-MADISON IRRIGATION DISTRICT, an Idaho Irrigation District of P.O. Box 15, St. Anthony, ID 83445 (hereinafter "FMID") and Teton Farms I, LLC, an Idaho limited liability company with a mailing address of P.O. Box 1670, Driggs, ID 83422 (hereinafter "Teton Farms"), to-wit:

Recitals:

Whereas, Teton Farms made an application for transfer as more fully described in that certain application No. 82591 which, among other purposes, is intended to change the point of diversion and place of use for water rights 22-500B, 22-14224, 22-14225 and 22-14226 (hereinafter "Application"), and

Whereas, FMID filed a protest against the Application based upon FMID's position that said transfers are an expansion of the original water rights and thus will cause injury to FMID's valid and decreed storage water rights and ground water rights; and

Whereas, the parties desire to settle FMID's protest in a manner which requires Teton Farms to evidence the actual one hundred and one (101) acres to be watered within a one hundred seventeen (117) acre permissible place of use; and

Whereas, it is understood that IDWR will not add the terms of this Stipulation to the license to be granted to Teton Farms except perhaps to refer to this Stipulation if it is recorded in Teton County, where the changed diversion(s) are to take place;

Now Therefore, it is agreed by and between the Parties as follows:

Teton Farms shall modify its Application to comply with the following terms:

1. Teton Farms agrees that it will require the transferred rights to refer to this Stipulation, which shall be recorded in the official records of Teton County, Idaho and that its terms and conditions shall apply to the use and diversion of any transferred right resulting from the Application.
2. Teton Farms shall only divert water from the resulting transferred rights resulting from the Application upon 101 acres of the 117 acres granted as permissible place of use.
3. Teton Farms shall only divert water from the resulting transferred rights resulting from the Application if and when a detailed map is provided to FMID prior to any year's irrigation season which clearly depicts the 101 acres which are intended to be irrigated within the 117 acres granted as permissible place of use (hereinafter "Map").

4. Should Teton Farms desire to irrigate a different 101 acres than the originally designated irrigated acres, then prior to any year's irrigation season, Teton Farms must provide a modified Map to FMID which clearly depicts the modified or changed 101 acres which are intended to be irrigated within the 117 acres granted as permissible place of use.
5. Upon the recording of this Stipulation which shall be conditioned in any approved transfer based upon the Application, FMID shall withdraw its protest/objection.
6. Should Teton Farms thereafter divert without providing the Map or otherwise fail to comply with the terms and limitation of acres required by this Stipulation, Teton Farms shall be in default of this Stipulation and FMID shall have the right to cause Teton Farms's diversion to be curtailed immediately, by whatever legal means possible, including, but not limited to locking Teton Farms's gate(s) and pumps by IDWR's water master.
7. If either party defaults in performance of any of the terms of this Agreement, then the non-defaulting party, without in any manner limiting its legal and equitable remedies, may provide the defaulting party a telephonic followed by immediate written notice (including email) requiring it to cause such default to be corrected immediately. Unless within 5 days after such notice to the defaulting party, such default shall be corrected or arrangements for the correction shall be made, the non-defaulting party may immediately exercise its rights against the defaulting party, including but not limited to injunctive relief, and the defaulting party shall be liable to the non-defaulting party for any related costs or expenses. The non-defaulting party may exercise any rights, claims, or demands which the defaulting party may have against third persons in connection with its default and the defaulting party does hereby assign, transfer, and set over unto the non-defaulting party all such rights, claims, and demands it may have to assist the non-defaulting party to cure a default by the defaulting party.
8. Neither party may assign its rights or obligations within this Agreement to a third party without the express written consent of the other party.
9. This Agreement shall inure to and be binding upon the parties hereto and their successors and assignees, including the successors and assigns of the lands upon which the transfer is authorized as its place of use. The Parties represent that each has the right, power and authority to enter into this Agreement without further contingent requirements than those set forth hereinabove.
10. This Agreement and related documents specifically contemplated by this Agreement constitute and contain the entire agreement of the parties and supersedes and merge all other prior understandings and/or agreements between the parties, if any, whether verbal or written.

RVB

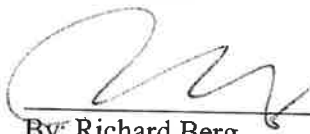
11. This Agreement shall be governed by and interpreted under the laws of the State of Idaho.

Dated this 9th day of May, 2019.

"FMID"


By: Jeff Raybould
Its: Chairman

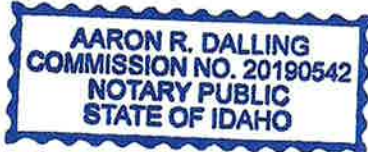
"Teton Farms"


By: Richard Berg
Its: Manager

STATE OF IDAHO)
)ss.
County of Fremont)

On this 17th day of May, 2019 before me a notary public in and for said State, personally appeared Jeff Raybould known to be the Chairman of the irrigation district that executed the instrument or the person who executed this instrument on behalf of said irrigation district and acknowledged to me that such irrigation district executed the same.

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

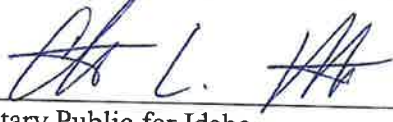



Notary Public for Idaho
Residing at:
My commission expires: 3-14-2025

STATE OF IDAHO)
)ss.
County of Teton)

On this 9th day of May, in the year 2019, before me, the undersigned, a Notary Public, personally appeared, **Richard Berg**, known or identified to me, to be the manager or a member of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.




Notary Public for Idaho
Residing at: Driggs ID
My Commission Expires: 7-10-2024



Effect on Agricultural Base of the Local Area:
No issues identified.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.