

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

\$50 fee

Received by SCReceipt No. ED38132Date 10/26/12**RECEIVED****NOV 01 2012****DEPT OF WATER RESOURCES****REQUEST FOR EXTENSION OF TIME**

To provide additional time in which to submit proof of beneficial use for a water right permit

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code in which to complete development of a water right and file proof or beneficial use of water. There is a **FILING FEE of \$50.00** to be included with this form when filed with IDWR.

Permit no. 22-13506 (Originally split from 22-7022) Date proof is due November 1, 2012Name(s) of permit holder(s) Fremont-Madison Irrigation DistrictMailing address P.O. Box 15 City St. Anthony State ID Zip 83445Telephone no. 208-624-3381 Email _____

Describe what work has been completed toward the development of this water right:

If no work has been completed, show "none".

Five Wells have been developed and have been recently adjudicated in the SRBA as water right numbers: 21-13151 and 22-14057. The development of the balance of the original water right number 22-7022 has not yet been completed. See attached Affidavit and Memo by Jerry R. Rigby.

Costing \$200,000+

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

For a detailed explanation of the history of the original permit 22-7022 and its acquisition by Fremont Madison Irrigation District from BOR, together with its proceeding through the Snake River Basin Adjudication as a claim, please see the attached Affidavit of Jerry R. Rigby.

Permit holder(s) request an extension to November 1, 2017.Signature *Jerry R. Rigby* Atty. Gen. FMID
(If other than permit holder, Power of Attorney must be supplied)October 25, 2012

Date

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be **APPROVED** and the time within which to submit proof of beneficial use is extended to **November 1, 2017** per Order Dated November 8, 2012.

RECEIVED**OCT 26 2012**Department of Water Resources
Eastern Region

Signed this _____ day of _____, 20____

RECEIVED

OCT 26 2012

Department of Water Resources
Eastern Region

Jerry R. Rigby, Esq. (ISB No. 2470)
of RIGBY, ANDRUS
& RIGBY, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

Attorneys for Fremont Madison Irrigation District

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF	)	
APPLICATION FOR PERMIT NO	)	
22-13506, ORIGINALLY 22-7022	)	
SPLIT INTO 22-13505 & 22-13506 IN	)	AFFIDAVIT & MEMORANDUM IN
THE NAME OF FREMONT	)	SUPPORT OF REQUEST FOR EXTENSION
MADISON IRRIGATION DISTRICT	)	OF TIME

STATE OF IDAHO)
)ss.
County of Madison)

JERRY R. RIGBY, having been duly sworn, states under oath as follows:

1. I am the attorney for Fremont Madison Irrigation District in the above entitled action.
2. The United States Department of Interior (hereinafter "BOR") applied for water right permit number 22-7022 with a priority date of April 23, 1969 (hereinafter sometimes referred to as "Permit" or "Permits"). The Permit was first used to develop five wells (so called "test wells") but the vast majority of the Permit was never developed by BOR. Nevertheless, the Permit continued to be active based upon I.C. § 42-204(4) which allows the United States to hold permits indefinitely without developing the rights upon showing of good cause.
3. Fremont Madison Irrigation District (hereinafter FMID) then negotiated an agreement

with BOR to purchase the wells and Permit along with the Chester Dam and the Cross Cut Canal through Title Transfer laws then in place. In 2006, near the time of the title transfer from BOR, FMID negotiated an agreement with Twin Falls Canal Company and North Side Canal Company as to certain rights and restrictions regarding FMID's ability to future development of the Permit (hereinafter "MOU" a copy of which is attached hereto). The costs of acquisition of the Permit along with the additional expenses incurred by F/M in order to comply with the E.I.S. requirements were substantial, exceeding well beyond \$200,000.

4. In 2006, based upon the MOU with Twin Falls Canal Company and Northside Canal Company (hereinafter Canal Companies), the Permit was split into two rights, 22-13505 and 22-13506 and processed as water right claims in the Snake River Basin Adjudication even though they had not yet been licensed. Approximately five years after the purchase of the Permit, FMID timely requested and received a five year extension of time to develop the Permit pursuant to I.C. § 42-204(5) even though the Water Court had previously determined any "claim" in the SRBA was automatically stayed from forfeiture of any rights.

5. Proceeding through the SRBA, the Permits were involved with what was commonly known as the Recovered Water Claims ("RecRec claims"). Among other things, the RecRec claims were based upon the Department's previous determination and recommendation that certain wells of an organization were entitled to recover certain water recharged into the ground from the organization's (including Canal Companies which diverted within the boundary of FMID) surface water diversions based upon a specific mitigation formula. However, the basis upon which the recommendation was granted was eventually overturned by the Water Court of the SRBA. FMID then expeditiously proceeded to have the developed wells from the Permit

proceed to a license and then further proceed to a partial decree. On August 30, 2012, the 5 developed wells were licensed under rights numbers 21-13151 and 22-14057 and are in the process of obtaining the final decree based upon said licenses.

6. Only now that the MOU has been complied with and the 5 developed wells will be adjudicated under 21-13151 and 22-14057, is FMID finally able to proceed outside of the SRBA and develop the balance of the original permit 22-7022. At this time, FMID is requesting an additional five years or at least a minimum of two years to develop the balance of right number 22-7022 pursuant to IC § 42-204(1) & § 42-204(2).

7. IC § 42-204(1) reads:

In cases where the applicant is prevented from proceeding with his work by . . . litigation of any nature which might bring his title to said water in question, the department of water resources upon proper showing of the existence of any such condition, and being convinced that said applicant is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit for each and every action required.

8. FMID should be allowed an additional five years to develop the balance of the Permit under the above due to the fact that the question in the RecRec claims was: what source of water was the water being pumped from the Permit, recovery of the surface water which sunk into the ground or was it a new source as depicted in the original Permit? This clearly impacted the title and therefore complies with the statutory language that the litigation (SRBA) MIGHT bring FMID's title to said water into question (see above). The ownership of the water to be pumped under the RecRec claims was based upon a dependency of irrigation companies within FMID's boundary sinking their water in order to mitigate for the pumping of FMID's wells to add to individuals within said irrigation companies' storage.

9. Furthermore, no one can dispute that FMID vigorously pursued its claims in the SRBA and therefore complied with the above statute in that it proceeded “diligently and in good faith”. For these reasons, FMID should be granted an extension of time lost by such delays which effectively ended up being the entire 5 years of the original extension.

10. FMID should also be allowed the benefit of the “Automatic Stay” granted all other claims in the SRBA as is the rule of law within the SRBA. Based upon this theory, the original five year extension of time granted to FMID during the time of the adjudication would have been tolled and begin to expire once the partial decree is entered in the adjudication.

11. In the alternative, even if it is determined that IC § 42-204(1) does not apply or that the automatic stay granted to claims in the adjudication does not apply, then FMID asserts that IC § 42-204(2) also applies.

12. IC § 42-204(2) reads:

The time for completion of works and application of the water to full beneficial use under any permit involving the diversion of more than twenty-five thousand (25,000) acre feet in one (1) irrigation season for a project of no less than five thousand (5,000) acres, may upon application to the director of the department of water resources supported by a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size, be extended by the director of the department of water resources for an additional period of seven (7) years, but not to exceed twelve (12) years in all from the date of permit: Provided, that no such extension shall be granted unless the applicant for such extension shall show that there has been actually expended toward the construction of said diversion (including expenditures for the purchase of rights of way and property in connection therewith) at least one hundred thousand dollars (\$100,000).

13. FMID should be allowed an additional two years to develop the Permit. The above statute addresses the completion time when there is a potential minimum diversion of 25,000 acre feet in one season. The Permits clearly meets that requirement. Further, more than

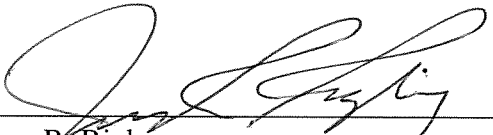
\$100,000.00 has been spent: (1) in pursuing the claims through the SRBA in fees to attorneys, hydrologists and other consultants in an effort to claim the rights through the Recovered Water claims in the SRBA just recently resolved and (2) in fees and costs through the transfer of title process of the Permit from BOR to FMID.

14. Normally, IC § 42-204(2) requires that the allowed 7 year extension of time should not exceed twelve years in all from the date of the permit. Clearly, this permit was granted in 1969. However, it would be more appropriate and equitable in this case to start the clock at the time FMID acquired the permit from BOR. As mentioned above, the BOR was the initial owner of the permit, and as such was not required to develop the right. But for the title transfer to FMID, the permits would continue to be held by BOR and continue to be fully active and able to be developed. Upon receipt of the permits, FMID has been engaged with these permits through claims made in the SRBA as set forth above. A review of the SRBA history of these rights shows that there were many objections made and countless proceedings. It would not have made sense to proceed with actual construction of additional wells before these objections were resolved.

15. At this time, FMID is now in a position to proceed with construction of certain amounts of the remaining Permit within additional wells. Furthermore, the primary original objectors to the continued development of the rights, the Canal Companies, have agreed to work with FMID in a joint effort to determine the possibility of jointly owned or managed wells under the balance of the Permit for the benefit of both FMID and the Canal Companies. For these reasons, the 7 year extension time should be deemed to have been granted at the last application for extension made by FMID which would allow FMID a minimum of an additional 2 years from

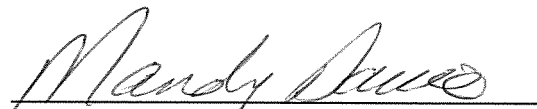
this November in which to develop the balance of the rights under the Permit.

Dated this 25th day of October, 2012


Jerry R. Rigby
Attorney for FMID

SUBSCRIBED AND SWORN to before me this 25th day of October 2012




Notary Public for Idaho
Residing at: St. Anthony
My Commission Expires: 6/24/17

COPY

473586
Microfilm #
25 May 2002
At 10:05 O'clock A
ADBE MAGE
FEE \$ 15
FREMONT CO. RECORDER
Recorded at Request of
John A. Rasmussen
2932nd St
Twin Falls
Id
833

AGREEMENT

This agreement, made this 15th day of March, 2002, between the Fremont-Madison Irrigation District, an irrigation district duly organized and existing under and by virtue of the laws of the State of Idaho, hereinafter referred to as the "District;" and Twin Falls Canal Company and North Side Canal Company, Ltd., irrigation corporations in good standing under the laws of the State of Idaho, hereinafter referred to as "TFCC" and "NSCC" respectively;

WITNESSETH

WHEREAS the District seeks Title Transfer from the United States of certain facilities used by the District in the operation of the District's project including wells developed pursuant to Idaho Water Permit No. 22-07022 which wells are the subject of an agreement with the U.S. Bureau of Reclamation (USBR) dated September 16, 1977; and

WHEREAS the District also seeks the transfer of any developmental rights still existing under Water Right No. 22-07022 for the purpose of developing an adequate supply of supplemental water to satisfy the District's irrigation needs in short water years, to an annual total diversion of 80,000 a/f/a, up from the 35,000 a/f/a which is the maximum diverted by the District in any one year under the September 16, 1977, agreement; and

WHEREAS TFCC and NSCC have concerns about the future development by the District and potential injury to their water rights and water supplies; and

WHEREAS the parties wish to delineate their agreement in writing;

NOW, THEREFORE, in consideration of the mutual covenants and stipulations herein contained, the parties agree as follows:

1. District's Covenant and Agreement With TFCC and NSCC

District covenants with TFCC and NSCC not to develop and divert more than a total of 80,000 a/f/a of water for irrigation purposes from developed wells and those developed in the future under Permit No. 22-07022, said water to be applied only to acres irrigated by the District as of the date of this agreement, and only as a supply to supplement traditional supplies of natural flow and storage.

2. Mitigation Plan

The development of wells additional to the existing five (5) wells under Permit No. 22-07022 shall not occur until the District has obtained a

2. Mitigation Plan

The development of wells additional to the existing five (5) wells under Permit No. 22-07022 shall not occur until the District has developed a plan [for wells other than the presently existing five (5) wells] which mitigates for injury of TFCC, NSCC, and other irrigation water users and which is approved by the Idaho Department of Water Resources.

3. Development of Permit No. 22-07022 to Above 80.000 a/f/a

There shall be no development of any water above the 80,000 a/f/a under Permit No. 22-07022 contemplated by this agreement without the express written consent of the parties, and then only if the purpose is to benefit the parties to this agreement.

4. Support

TFCC and NSCC agree to support the Resolution attached hereto as Exhibit A at the annual meeting of the Idaho Waterusers Association and a Congressional bill on the transfer of Water Permit No. 22-07022 consistent with this agreement.

5. Extension

TFCC and NSCC agree not to oppose an extension of time request to IDWR by the District to give the District an opportunity to make beneficial use of the water.

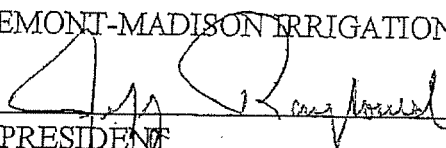
6. Binding

The provisions of this agreement shall apply to and bind the successors and assigns of the parties hereto.

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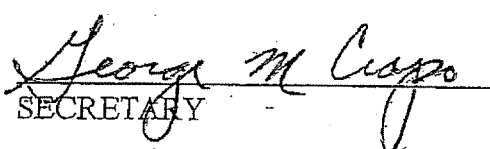
IN WITNESS WHEREOF, the parties have executed this agreement effective the day and year first above written.

FREMONT-MADISON IRRIGATION DISTRICT

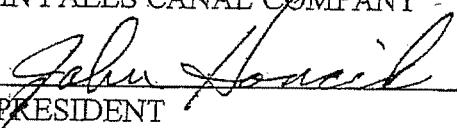
By: 

PRESIDENT

Attest:

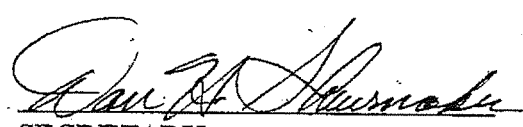

SECRETARY

TWIN FALLS CANAL COMPANY

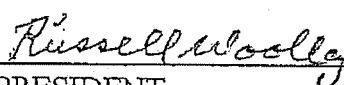
By: 

PRESIDENT

Attest:

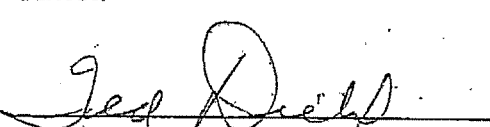

SECRETARY

NORTH SIDE CANAL COMPANY, LIMITED

By: 

PRESIDENT

Attest:

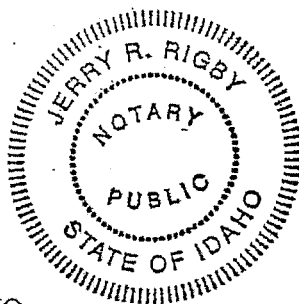

SECRETARY

STATE OF IDAHO)

County of FREMONT)

On this 7th day of March, 2002, before me, a Notary Public for the State of Idaho, personally appeared EXECUTIVE DIRECTOR OF FREMONT-MADISON IRRIGATION DISTRICT, known or identified to me, to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he 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.



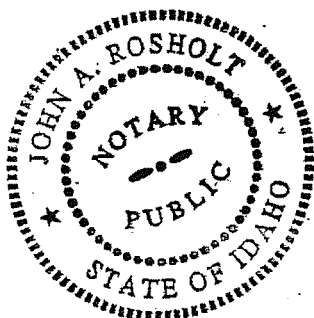
[Signature]
 NOTARY PUBLIC FOR IDAHO
 Residing at Red Lake
 My Commission Exp. 11-09-05

STATE OF IDAHO)

County of Twin Falls)

On this 12th day of March, 2002, before me, a Notary Public for the State of Idaho, personally appeared PRESIDENT OF TWIN FALLS CANAL COMPANY, known or identified to me, to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he 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.



[Signature]
 NOTARY PUBLIC FOR IDAHO
 Residing at Twin Falls
 My Commission Exp. 2006

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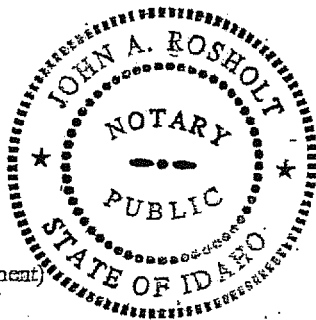
STATE OF IDAHO)

County of

Jerome)

On this 15th day of March, 2002, before me, a Notary Public for the State of Idaho, personally appeared PRESIDENT AND SECRETARY OF NORTH SIDE CANAL COMPANY, LTD., known or identified to me, to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they 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.



(find/agreement)

John A. Rosholt

NOTARY PUBLIC FOR IDAHO

Residing at Twain Falls

My Commission Exp. 2006