

BEFORE THE STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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JUN 18 2010

Department of Water Resources
Eastern Region

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 76065.

Applicant: Grand Teton Canal Co., Ltd

STIPULATED SETTLEMENT
AGREEMENT

This Settlement Agreement is entered into this 9th day of March, 2010, between the applicant, Grand Teton Canal Co., Ltd. ("Applicant") and the undersigned protestants Fremont-Madison Irrigation District, Teton Pipeline Association, and the United States Department of Interior Bureau of Reclamation (collectively, the "Protestants").

RECITALS

A. On October 8, 2009, Applicant filed Application for Transfer No. 76075 (the "Application" or "Transfer") with the Idaho Department of Water Resources ("IDWR"), seeking to enable the Applicant's shareholders to develop storage ponds using water available to them under their shares of stock.

B. Protestants filed timely protests to the Application with the IDWR on January 4, 2010 (the "Protests").

C. Applicant and Protestants desire to settle and resolve the Protests based upon Applicant's commitment to make certain amendments to the Application as set forth herein below.

AGREEMENT

In consideration for the foregoing and the mutual promises contained herein, Protestants agree to settle and withdraw their Protests on the following terms and conditions:

1. The following shall be conditions to the Transfer:

a. Water shall not be diverted for storage purposes annually until May 15 unless Fremont-Madison Irrigation District ("FMID") and the United States Department of Interior Bureau of Reclamation ("BOR") provide written consent to earlier diversion for storage purposes. A request for earlier diversion for storage purposes shall be made in writing by the Applicant. Upon receipt of such a request from the Applicant, FMID and BOR shall have seven (7) days to respond in writing. If no response is provided within seven (7) days, then such non-response shall be deemed written permission for the earlier diversion of storage.

b. Irrigation ponds capable of being filled within a 24-hour period do not require mitigation and can be filled any time during the irrigation season. Similarly, mitigation is not required to construct and use a pond or ponds that are part of system used to distribute and use water in accordance with Applicant's water right if the pond or ponds do not impound a larger volume of water than authorized for diversion within a 24-hour period under the water right or rights associated with the project. Mitigation is required for all other ponds.

c. All ponds that require mitigation shall be lined to prevent seepage.

d. Ponds may be filled or refilled no more than once annually.

e. Applicant must mitigate for the initial fill and any refill of ponds located within Applicant's service area and supplied with water from Applicant.

i. Mitigation for fill and refill may be accomplished by drying up irrigated acres or by utilizing storage water in FMID. If storage water from FMID is available for fill or refill under provision e.iii below, the Applicant is encouraged to first use such storage water for fill or refill before considering mitigation by drying up irrigated acres.

ii. Mitigation for pond fill/refill that may be accomplished by the drying up of irrigated acres shall be calculated using the growing season precipitation deficit tables for the Driggs station found on the University of Idaho website for Evapotranspiration and Consumptive Irrigation Water Requirements for Idaho. First, the volume of fill/refill must be measured. Second, the number of acres that must be dried up to mitigate for fill/refill is calculated by dividing the fill/refill volume by the growing season precipitation deficit for the crop historically grown on the land to be dried up.

iii. The use of FMID storage water for pond fill/refill shall require an inquiry by Applicant or the pond owner with IDWR to determine if an exchange application or other authorization is necessary. If IDWR determines that an exchange application or other authorization is not necessary, then no further authorization from FMID is required. If IDWR determines that an exchange application or other authorization is necessary, then Applicant or the pond owner shall file any necessary application or documentation, and shall also obtain approval from FMID for the exchange, which approval shall be in FMID's sole and absolute discretion.

iv. Prior to each irrigation season, Applicant shall notify FMID of the volume of FMID storage water (by owner) dedicated to mitigation for pond fill/refill.

f. Applicant must mitigate for annual pond evaporation from ponds located within Applicant's service area and supplied with water from Applicant by drying up irrigated acres. Mitigation for pond evaporation shall be calculated using the growing season precipitation deficit tables for the Driggs station found on the University of Idaho

website for Evapotranspiration and Consumptive Irrigation Water Requirements for Idaho. First, the growing season evaporation volume is calculated by multiplying the surface area of the pond by the precipitation deficit for the type of pond. Second, the number of acres that must be dried up to mitigate for evaporation is calculated by dividing the evaporation volume by the growing season precipitation deficit for the crop historically grown on the land to be dried up.

g. If irrigated land is to be dried up for mitigation, the pond owner must dry up a minimum of one acre. For example, if 0.5 acres of land must be dried up to meet the mitigation requirement, the pond owner must dry up at least one acre.

h. No more than 500 irrigated acres may be dried up for mitigation purposes in any given year. Thus, the maximum amount of water that may be used for pond storage under this Transfer is limited by the amount of mitigation that can be accomplished by drying up 500 irrigated acres.

i. Applicant shall provide an annual accounting to IDWR by November 15th that describes each pond, and the mitigation required and provided for the year. The annual accounting shall include a GIS shapefile or other map depicting all acres dried up for mitigation purposes.

2. Applicant and Protestants jointly request that the provisions of this Settlement Agreement be incorporated in an Order from IDWR approving the Application.

3. This Settlement Agreement shall be binding on the parties and their respective heirs, legal representatives, agents, successors-in-interest, and assigns, and shall insure to the benefit of such persons.

4. The parties enter into this Settlement Agreement on the date indicated above.

APPLICANT:

GRAND TETON CANAL CO., LTD.

By: Robert L. Harris
Print: ROBERT L. HARRIS
Its: ATTORNEY

ATTEST:

By: Cheri Vandermeulen
Print: Cheri Vandermeulen
Its: Legal Secretary

PROTESTANT:

FREMONT-MADISON IRRIGATION DISTRICT

By: Jeffery D Raybould
Print: Jeffery D Raybould
Its: Chairman

ATTEST:

By: George M Crapo
Print: George M. Crapo
Its: Sec. Treasurer

PROTESTANT:

TETON PIPELINE ASSOCIATION

By: _____
Print: _____
Its: _____

ATTEST:

By: _____
Print: _____
Its: _____

PROTESTANT:

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION

By: _____
Print: _____
Its: _____