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Instrument # 209721

TETON COUNTY, IDAHO

2-10-2010 03:51:00 No. of Pages: 5

Recorded for : ROCKY MOUNTAIN ENVIRONMENTAL ASS

MARY LOU HANSEN

Fee: 15.00

Ex-Officio Recorder Deputy

Index to AMMENDMENT

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 22-13912 IN THE NAME
OF MARK HARRINGTON.

**AMENDED STIPULATION FOR
WITHDRAWAL OF PROTEST**

THIS AMENDED STIPULATION FOR WITHDRAWAL OF PROTEST (the "Stipulation") is made and entered into as of the 7th day of January, 2010, by and between Mark Harrington, a private individual (hereinafter, "Harrington"), and Fremont-Madison Irrigation District (hereinafter, "Fremont-Madison").

RECITALS:

- A. Harrington is the applicant of Application For Permit 22-13912 ("Application") filed with the Idaho Department of Water Resources ("IDWR"), an application to develop three small ponds (the "Ponds") as part of a conservation easement on his property.
- B. The Application seeks to obtain a water right for the storage of 11.8 acre-feet of water among three Ponds. The Ponds will be used for wildlife storage from January 1 to December 31 each year. Water to fill the Ponds would be made available from a spring-fed stream originating just east of the ponds.
- C. Prior to construction of the ponds, the lands cultivated "grass hay", which includes: Timothy, Fescue, Orchard Grass, Yarrow, with some Brome and some Wheatgrass.
- D. During the spring and most of the summer months, the ground is saturated to a point that there is standing water. Indeed, nearby areas constitute recognized wetlands based upon

USGS topographic maps.

- E. Harrington has been working with Teton Regional Land Trust and the National Resource Conservation Service (NRCS) to create three unlined ponds along the unnamed stream channel for wildlife habitat. The three pond area is in a conservation easement.
- F. Analysis of Evapotranspiration (ET) of the above listed native plants using current ET estimation formulas with respect to weather data provided by the National Weather Service Station located at Driggs, Idaho demonstrate that grass hay of an area of 3.51 acres (or the area to be covered by all three ponds) consumes 6.52 acre-feet of water per year. A similar analysis for evaporation from open water from the same 3.51 acres shows consumptive use of the water at 5.5 acre-feet per year **for a net decrease of ET**. Stated another way, the proposed ponds **will use less water** than existing grass hay under past conditions.
- G. Proposed ponds will be unlined and are not anticipated to experience significant seepage losses due to high water table.
- H. Fremont-Madison filed its protest to the Application on February 24, 2009, claiming that approval of the Application will impact and/or injure its water rights and its electors.
- I. After discussions between the parties to resolve the protest, Harrington and Fremont-Madison agree as set forth below.

AGREEMENTS:

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **DIVERSION PERIOD:** Harrington agrees to the following:

that the three ponds lie on an unnamed spring-fed stream and that the continuous natural flow of the springs combined with high ground water table of the USGS mapped wetlands maintains constant pond levels year round.

that since the ponds are continuously full year round and that said ponds are located "on-stream" and have been designed and are now part of the stream itself, they cannot be easily bypassed nor would such bypass result in increased accrual of water to Fremont-Madison.

that Harrington has lived at this property address for the past 25 years and that during time of significant drought, the spring-fed creek that now sustains the ponds of permit number 22-13912 never discontinued to flow and that to the best of his knowledge will continue to flow and sustain full capacity of the ponds in perpetuity.

that the continued sustaining of the ponds year round will not result in the impedance or delay of water that would otherwise flow to fill reservoirs or water rights that could ultimately affect the ability of Fremont-Madison to store water.

According to hydrologic calculations, 1.01 acre-feet per year that will result in a net gain in the system or after a period of about 3 and a half years, the ponds will have fully mitigated the volume of their storage and could result in a an accrual of 1.01 acre-feet annually to Fremont-Madison's favor. and

agrees that he will not divert any of his existing water rights from Cherry Grove Canal to fill or maintain the ponds.

2. **STORAGE LIMITATION.** Harrington will limit storage to the ponds to six and three tenths (6.3) acre feet. Combined, the ponds surface area size is approximately 3.51 acres.
3. **RECORDING.** Harrington 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 IDWR and FMID.
4. **WITHDRAWAL OF PROTEST.** With the execution of this document, FMID hereby withdraws its protest to the Transfer conditioned upon IDWR's reference to this Settlement Agreement in the approval of the Transfer.
5. **BINDING EFFECT.** 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.
6. **COOPERATION.** 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.

FREMONT-MADISON IRRIGATION DISTRICT

Dale L. Swensen
By: Dale L. Swensen
Its: Executive Director

Attest: _____

STATE OF IDAHO)
)ss.
County of Fremont)

On this January 2010 day of ~~June~~, 2009, before me a notary public in and for said State, personally appeared Dale L. Swensen known or identified to me (or proved to me on the oath of _____) to be the Executive Director of the irrigation district that executed the instrument or the person who executed the 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.



Ladonna Henman
Notary Public for Idaho
Residing at: Kipley, ID
My commission expires: 6-1-2011

MARK HARRINGTON

By: _____

Mark Harrington

STATE OF IDAHO)

)ss.

County of TETON)

On this 10th day of February, ²⁰¹⁰, before me a notary public in and for said State, personally appeared Mark Harrington, known or identified to me to be the person whose name is subscribed to the within 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.

(seal)

HOPE MCKENZIE
NOTARY PUBLIC
STATE OF IDAHO

Hope McKenzie

Notary Public for Idaho

Residing at: Teton County

My commission expires: 12-10-15