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W. Roger Warner
ROCKY MOUNTAIN ENVIRONMENTAL ASSOCIATES, INC.

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Instrument # 206353

TETON COUNTY, IDAHO

8-12-2009 12:09:00 No. of Pages: 4

Recorded for : ROCKY MOUNTAIN ENVIRONMENTAL

MARY LOU HANSEN

Fee: 12.00

Ex-Officio Recorder Deputy

Index to AGREEMENT

Signature

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 75646 IN THE NAME
OF TMW PROPERTIES LLC

AGREEMENT

THIS AGREEMENT is made and entered into as of the 6th day of July, 2009, by and between TMW PROPERTIES, LLC, an Idaho limited liability company (hereinafter, "TMW"), and Fremont-Madison Irrigation District (hereinafter, "Fremont-Madison").

RECITALS:

- A. TMW is the applicant for Application for Transfer No. 75646 ("Transfer") filed with the Idaho Department of Water Resources ("IDWR"), an application to develop two small wetland ponds (the "Ponds") as part of a contract with the NRCS to establish wetland improvements for waterfowl habitat on the existing place of use.
- B. The Transfer seeks to provide a water right for the filling, storage, and evaporation of water in the Ponds. The Ponds will be used for wildlife storage from April 1 to October 15 each year. Water to fill the Ponds is made available under Idaho water right No. 22-646 (the "right"). Prior to the development of the Ponds and filing of the Transfer, the decreed water right irrigated some 48.7 acres of land. The amount of water being transferred to storage from the Permits is 0.09 cfs or 8.6 acre feet annually.
- C. Fremont-Madison was provided a copy of the Transfer on May 18, 2009 to determine impact

- and/or injury to its water rights and its electors and to avoid formal protest.
- D. The water right has been favorably recommended in the Snake River Basin Adjudication (SRBA) and continues to be made available for the irrigation of the property.
- E. After discussions between the parties, TMW and Fremont-Madison agree as set forth below.

AGREEMENTS:

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **DIVERSION PERIOD:** TMW agrees that it will divert water from Deep Creek to the subject property **for the purpose of filling and storing water in the ponds and continued irrigation** only during the periods during the irrigation season when normal agricultural irrigation diversions from Deep Creek are occurring in the immediate area.
2. **DIVERSION AND STORAGE LIMITATION.** TMW will limit surface water diversion to the ponds to 0.09 cfs. Diversion volume to storage to the ponds will be limited to 8.6 acre feet annually. Combined, the ponds surface area size and volume is approximately 1.9 acres and 5.3 acre feet, respectively.
3. **RECORDING.** TMW 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. **AGREEMENT OF NON-PROTEST.** With the execution of this document, FMID hereby agrees **not to protest** conditioned upon IDWR's reference to this 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.

TMW PROPERTIES, LLC.



By: Timothy Watters

Its: Managing Member

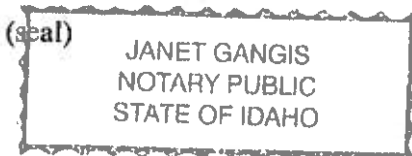
STATE OF IDAHO)

)ss.

County of Teton

On this 5th August day of July, 2009, before me a notary public in and for said State, personally appeared Timothy Watters known or identified to me (or proved to me on the oath of _____) to be the MANAGING 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.

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: Teton

My commission expires: 4/30/10

FREMONT-MADISON IRRIGATION DISTRICT

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

Attest: _____

STATE OF IDAHO)
)ss.
County of Fremont

On this 17 day of July, 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: Highway 20 Idaho
My commission expires: 6-1-2011