

REC'D 9/25/06

SEP 25 2006

DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 72128)
(REGARDING WATER RIGHT NOS.) SETTLEMENT AGREEMENT
61-2072, 61-2167, 61, 2170, 61-2210,)
61-7184, & 61-7339) IN THE NAME)
OF THE CITY OF MOUNTAIN HOME)
_____)

This stipulation and settlement agreement is entered into by the City of Mountain Home, Idaho, the applicant for the transfer of the above water rights, the Protestants to the transfer and the Intervenor Richard T. McMahon and Charlotte A. McMahon.

RECITALS

(a) The City of Mountain Home, Idaho, ("City") has entered into an agreement to purchase Water Right Nos. 61-2167 and 61-2210, which water rights have historically supplied irrigation water to the Warkentin farm in Sections 19 and 30, Township 4 South, Range 5 East, Boise Meridian, in Elmore County, Idaho, through a well located in the Northwest Quarter of the Southwest Quarter of said Section 19 and the Northwest Quarter of the Northeast Quarter of Section 30.

Wait sp. in writing

(b) The City filed an application with the Idaho Department of Water Resources ("Department") requesting a change of a point of diversion, an addition of five points of diversion, a change in the nature of use, a change in period of use, and a change in the place of use for Water Right Nos. 61-2167 and 61-220.

(c) After a meeting with the Department on October 24, 2005, and at the request of the Department, the City filed an amended application to reflect that there would be no change in the nature of use of the irrigation rights and that the City would not request that the water rights be changed to municipal rights.

(d) Notice of the application for transfer was given as provided by law.

(e) Protests to the transfer application were filed with the Department by Forrest Freer, Ramona E. Yrazabal, William and Theresa Brown, Richard Fisher, Joseph and Gloria Swails, Charles J. Olson, Truman E. Parker, Joseph W. Ferbrache, Luis Lasuen, Michael H. and Marilyn J. Landers, Jerry Loosli, Edmond Loosli, Esther Z. Fisher, Jim Carrie, Ronald F. Fisher, Robert K. Lytle, Patrick C. Cruser, Bill Sanders, Mae G. Sanders, Jack B. Donahue, Clair E. Long, Ralph Groefsema, Aaron Martin, and George P. Hazzard. *Lois and Delbert York*

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(f) On April 25, 2006, an Order was entered by the Department allowing Richard T. and Charlotte A. McMahon to intervene in the proceedings on the Application for Transfer #72128.

(g) The City, the Protestants and the Intervenors have met in an attempt to resolve the protests filed and the objections to the transfer of the Protestants and Intervenors.

(h) The parties to this settlement agreement understand that the Mountain Home regional aquifer is over appropriated and there is and has been a decline in the water level

of the aquifer, and that the City currently uses less than 5% of the total water withdrawn from the Mountain Home aquifer.

(i) The City is concerned and recognizes the concern of the Protestants, Intervenor and others over the declining aquifer.

(j) The City has agreed to modify its application in accordance with this settlement agreement and the Protestants and Intervenor have agreed to withdraw their protests based upon the promises and agreements contained herein.

IT IS HEREBY STIPULATED AND AGREED by the City, the Protestants and the Intervenor as follows:

1. The City hereby withdraws its request for additional points of diversion consisting of proposed Well Nos. 17, 18, the Shop Well and the Waster Water Treatment Plant Well and deletes the request for these new points of diversion from the transfer application, leaving only the Legacy Park Well as a new point of diversion.

2. In consideration of the City withdrawing its request and deleting from its transfer application the above additional points of diversion, particularly proposed Well Nos. 17 and 18, Forest Freer hereby withdraws his protest to the transfer application.

3. With reference to the amount of water allowed to be transferred, the parties agree to allow the Department to determine the amount of water subject to the transfer.

4. The City will make a reasonable effort in the future to utilize surface water irrigation rights and water from the perched aquifer to supplement irrigation water for new subdivisions and parks in an attempt to decrease the reliance on the Mountain Home aquifer.

5. The City will perform a standard pump test as required for municipal wells by the Department of Environmental Quality on any new well (Legacy Park,) drilled by the City in conjunction with this transfer application in an attempt to determine the cone of influence of the new well. If the City drills a new well in conjunction with this transfer the City will perform or have performed a standard pump test on the new well by a well drilling professional. During the standard pump test of the City's new well, the City will contract with a third party to measure the water levels of some identified wells that are representative of the Protestant's wells (domestic or otherwise) located within one-quarter mile of the new City well. If the drawdown on the wells of any of the Protestants during the standard pump test is projected to be more than five feet, the City will extend the monitoring of selected wells to as much as one-half mile in order to determine the cone of influence of the new well. The City shall make a reasonable effort to mitigate any damages caused by the drawdown as a result of the new City well by connecting the damaged Protestant to City water, a reasonable cash payment to the Protestant to compensate the Protestant for any damages caused by the new well, or pay for lowering the Protestant's pump, at the City's discretion. If the drawdown caused by a new well drilled as a part of this transfer is significant over the first three years of operation as compared to the normal drawdown of the aquifer, then the City will reconsider the cone of influence and take appropriate action.

6. The City will continue to work with the other members of the ground water committee and will actively participate towards the goal of developing a ground water management plan for the Mountain Home area.

7. The City hereby modifies its transfer application to incorporate this agreement as a part of the application for transfer.

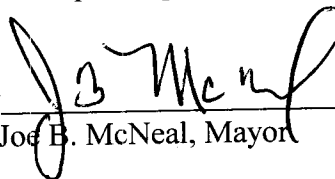
8. The Protestants and Intervenors hereby withdraw their protests and agree that the transfer can be made, subject to this agreement.

9. This agreement shall be binding upon the City, Protestants and Intervenors.

10. The provisions of this agreement may be incorporated in any order of the Department approving the City's application for transfer.

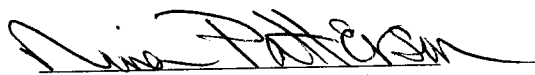
11. The parties agree that the provisions of this agreement shall govern the City's use of water pursuant to the water rights being transferred even if the conditions contained in this Agreement do not appear on either the water right or the transfer order issued by the Department.

City of Mountain Home, Idaho,
a municipal corporation,

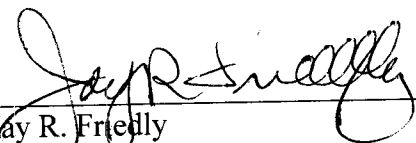
By 
Joe B. McNeal, Mayor



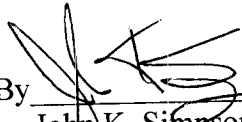
ATTEST:


Nina Patterson, City Clerk

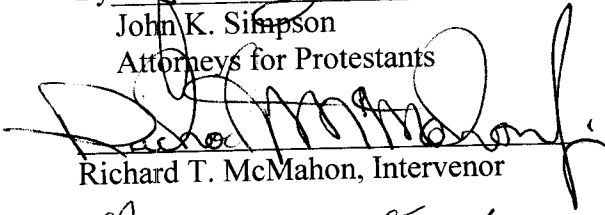
HALL, FRIEDLY & WARD

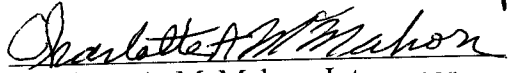
By 
Jay R. Friedly
Attorneys for Applicant

BARKER ROSHOLT & SIMPSON LLP

By 

John K. Simpson
Attorneys for Protestants


Richard T. McMahon, Intervenor


Charlotte A. McMahon, Intervenor

PROTESTANTS:

Theresa L. Jones Truman Parker

Clair B. Long

Connie Donahue

Jana Kyle

Ernie Z. Tucker

Don C. M.

Joe Terbrache

Kathy Terbrache

D. Swails

James W. Lane

Sally J. Custer

Robert York Lois York

Ramona E. Ysaguel

Marilyn J. Sanders

Michael H. Sanders

Carol P. Hays

Richard A. Fisher

Ralph G. Sorenson

William C. Brown

Theresa D. Brown

James J. Frazier

Charles J. Olson

Forrest T. Jones

Edmond Loach

Pat C. C.

Don Andreu Fisher

Carol Sander

Bill Sander

Mark G. Sander

Sam Sander