

FILED

10/15/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 20-0083

Attachment A

Stipulation for Entry of Second Amended Judgment and Consent
Decree

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

STATE OF MONTANA, by and through the DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, for and on behalf of the BOARD OF LAND COMMISSIONERS, and THE OFFICE OF THE ATTORNEY GENERAL,

Plaintiffs and Petitioners,

vs.

GREENFIELDS IRRIGATION DISTRICT, BOARD OF COMMISSIONERS OF GREENFIELDS IRRIGATION DISTRICT,

Defendants and Respondents.

Cause No. BDV-2016-999

**STIPULATION FOR ENTRY OF
SECOND AMENDED JUDGMENT
AND CONSENT DECREE**

The STATE OF MONTANA, by and through the DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, for and on behalf of the BOARD OF LAND COMMISSIONERS, and THE OFFICE OF THE ATTORNEY GENERAL (hereinafter "Plaintiffs" or "State") and GREENFIELDS

IRRIGATION DISTRICT, BOARD OF COMMISSIONERS OF GREENFIELDS IRRIGATION DISTRICT (hereinafter “Defendants” or “GID”) (collectively the “Parties” to this Stipulation) hereby stipulate and agree to the following:

1. On August 22, 2019, this Court entered its Order on Pending Summary Judgment Motions pursuant to which it granted partial summary judgment in favor of the Plaintiffs, and against the Defendants. The Order on Pending Summary Judgment Motions also denied Defendants’ converted motion for summary judgment.
2. On January 8, 2020, the Parties stipulated that the Order on Pending Summary Judgment Motions applies to the 666.5 acres of school trust land, specified below, located within the boundaries of the GID (collectively referred to herein as “State Lands”). An Amended Judgment reflecting that stipulation was entered on February 3, 2020. Those acres are legally described as follows:
 - 23 acres of school trust land subject to TLMD (Montana Department of Natural Resources & Conservation Trust Land Management Division) Lease 3640 located in S1/2NW1/4, S15, T22N, R1W;
 - 40 acres of school trust land subject to TLMD Lease 10631 located in E1/2NE1/4, NE1/4SE1/4, S16, T21N, R5W;
 - 83 acres of school trust land subject to TLMD Lease 9672 located in N1/2, SW1/4, S26, T22N, R1W;
 - 148 acres of school trust land subject to TLMD Lease 4976 located in NE1/4, E1/2NW1/4, S36, T22N, R2W;
 - 92 acres of school trust land subject to TLMD Lease 4931 located in N1/2, SE1/4, S36, T22N, R5W;
 - 90 acres of school trust land subject to TLMD Lease 3641 located in S1/2NE1/4, SW1/4, S16, T22N, R1W;
 - 36 acres of school trust land subject to TLMD Lease 1163 located in W1/2W1/2, S14, T21N, R6W;
 - 52 acres of school trust land subject to TLMD Lease 5109 located in W1/2W1/2, S23, T21N, R6W;
 - 40 acres of school trust land subject to TLMD Lease 9177 located in S1/2NE1/4, E1/2SE1/4, S35, T21N, R3W;
 - 40 acres of irrigated school trust land subject to TLMD Lease 2124 located in S1/2NW1/4, S35, T23N, R2W; and,

22.5 acres of irrigated school trust subject to TLMD Lease 2123 land located in NW1/4SE1/4, S25, T23N, R2W.

3. On February 7, 2020, GID appealed from the Order on Pending Summary Judgment Motions and Amended Judgment. On April 3, 2020, the State cross-appealed from the Order on Pending Summary Judgment Motions and Amended Judgment.

4. On October 15, 2021 the Parties entered a stipulation to dismiss GID's appeal and the State's cross-appeal. The Parties further stipulated to file with this Court this Stipulation for Entry of Second Amended Judgment and Consent Decree, pursuant to which the Parties stipulate and consent to the following:

- a. Consistent with this Court's August 22, 2019 Order on Pending Summary Judgment Motions, the Parties' January 2, 2020, Stipulation for Entry of Judgment, and the Nineteenth Judicial District Court's May 29, 1925, order forming GID *In re Matter of the Formation of the Greenfields Irrigation District*, the Parties stipulate and agree that the State Lands are eligible to receive water service from GID.
- b. The Parties stipulate that unless otherwise provided by law or in this Stipulation, the State Lands have and are subject to the same rights, privileges, responsibilities, obligations, and protections under Montana law, including but not limited to Title 85, Chapter 7, Mont. Code Ann., that apply to irrigable land within the boundaries of GID that is annually assessed through county taxes including a right to receive an irrigation apportionment from GID's irrigation water right, 41K 40870-00¹ and all subsequent iterations thereof, equal to that apportioned to assessed lands within the district.
- c. The Parties stipulate that the State Lands are not taxable and may not be foreclosed on pursuant to Montana law. The Parties agree that to secure its annual irrigation apportionment, which is a transferable and recordable right, the exercise of which is conditioned and regulated in the same manner as the right enjoyed by taxable land, the State shall pay an amount agreed to by the Parties and, in addition, is hereafter subject to an "annual delivery fee." The annual delivery fee shall be equal in amount, but not more than the annual Operation and Maintenance (O&M) fee set by the Board for irrigable

¹ GID co-owns this water right with the United States Bureau of Reclamation, as of the date of this filing.

land within the boundaries of the GID that is annually assessed through county taxes pursuant to §§ 85-7-2101, *et. seq.* MCA.

- d. The Parties stipulate that the State Lands are entitled to the annual irrigation apportionment in an amount equal to that set by the GID Board on the same per acre basis for other irrigable land within the boundaries of the GID that is annually assessed through county taxes pursuant to §85-7-1911, MCA, conditioned by this Stipulation and the Agreement. They further stipulate that the amount and use of such water is subject to control in the same manner as assessed land, including reduction, as provided in Title 85, Chapter 7, Montana Code Annotated.
- e. The Parties stipulate that the GID water beneficially used on the State Lands is appurtenant thereto as provided in 85-7-1911, MCA.
- f. The Parties further stipulate that GID will submit the amount of the annual delivery fee to the State Land lessee on or before December 1 of each year. By November 1 of each year, the State will notify GID as to who the proper lessee and billing party is, so as to facilitate this billing practice.
- g. The Parties further stipulate that GID will provide the State, by and through the Department of Natural Resources and Conservation, with notice of all annual delivery fees, delinquencies, and other information pertinent to the State Lands, containing the same or similar information provided other landowners within the district in regard to their lands.
- h. The Parties stipulate that the State Lands' irrigation apportionment described herein is subject to the GID Board's policies consistent with Title 85, Chapter 7, Mont. Code Ann., on an equal footing with irrigable land within the boundaries of the GID that is annually assessed through county taxes.
- i. The Parties further stipulate that this Stipulation and the Second Amended Judgment and Consent Decree shall be maintained by GID in its files for the State Lands and recorded by the State with the Teton County Clerk and Recorder.
- j. The Parties stipulate that this dispute shall be finally adjudicated and resolved in accordance with this Stipulation and the Second Amended Judgment and Consent Decree. The Parties stipulate that to the extent the Order on Pending Summary Judgment Motions is inconsistent with or conflicts with this stipulation, it is hereby vacated and of no legal force and effect.

10/15/2021

Date

By

Brian C. Bramblett
Attorney for Montana Department of
Natural Resources and Conservation

10/14/21

Date

By

Jon Metropoulos, Metropoulos Law
Firm, PLLC
Attorney for Greenfields Irrigation
District

Oct. 15, 2021

Date

By Jeremiah Langston
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Assistant Attorney General
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