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DEPARTMENT OF
WATER RESOURCES

Names of Parties Filing Document:

UNITED STATES OF AMERICA

KENNETH H. JOHNS
QUEY L. JOHNS

Attorneys' Names and Addresses:

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Attorneys for the United States

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

) Subcase Number: 02-10297

)

) **STIPULATION TO RESOLVE**
) **OBJECTION**

)

The United States of America ("Objector") and Kenneth H. Johns and Quey L. Johns ("Claimants") agree and stipulate to resolve the United States Department of the Interior, Bureau of Land Management ("BLM") objection filed in the above-captioned subcase as follows:

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STIPULATION

1. Water right claim number 02-10297 describes 48.0 acres of unauthorized irrigated agricultural use of federal public land within NESE and NWSE, S02, T06S, R06E. The parties agree and stipulate to change the ownership of water right claim number 02-10297 from being in the name of Claimants to being solely in the name of BLM. The Claimants agree to bear all costs associated with maintaining this right in good standing.

2. The United States and the Claimant agree and stipulate that the parties shall execute a Standard Form 5 in subcase 02-10297 to change ownership pursuant to paragraph 1 above.

3. The Claimants are irrigating an additional 9.14 acres of federal public land without authorization within NESE and NWSE, S02, T06S, R06E that is not covered by water right claim number 02-10297. Within thirty (30) days of the date this Stipulation is filed with the Snake River Basin Adjudication Court ("SRBA"), the parties agree and stipulate to cooperate in creation and filing of an Application for Permit with the Idaho Department of Water Resources ("IDWR") solely in the name of the United States for these additional acres. The Claimants agree to bear all costs associated with seeking the license for this use and maintaining such right in good standing.

4. Within thirty (30) days of the date this Stipulation is filed with the SRBA District Court, the Claimants agree and stipulate to apply for a Land Use Authorization to conduct approximately 57.14 acres of irrigated agricultural use of federal public land within NESE, NWSE, S02, T06S, R06E. The Claimants recognize and understand that there is no guarantee or promise implied or inferred by this Stipulation that the BLM will approve or grant said application for Land Use Authorization. The Claimants further agree that no right, title, interest,

or economic expectation of use accrues to the Claimants due to the use of federal public land for agricultural purposes.

5. If, for whatever reason, the Claimants withdraw their application for Land Use Authorization, or the BLM denies the Claimants' application for a Land Use Authorization, or later terminates an issued Land Use Authorization, or an issued Land Use Authorization expires and is not renewed, then the BLM agrees to allow water used on the federal public land described in paragraph 4 to be transferred off of federal public land pursuant to I.C. § 42-222, and then confer title to the Claimants that portion of the water use successfully transferred off federal public land. The Claimants agree and stipulate to apply for said transfer within forty five (45) days of the Claimants withdrawing their application for Land Use Authorization, or of any BLM decision denying the Claimants' application for Land Use Authorization, or of termination of an issued Land Use Authorization according to its terms, or from the date an issued Land Use Authorization expires. The Claimants agree and stipulate that the Claimant shall not assume title to any places of use which describe public land pursuant to the aforementioned transfer. All costs incurred for seeking such transfer shall be borne by the Claimants.

6. The Claimants agree and stipulate that if the application for Land Use Authorization described in paragraph 4 is not filed with the BLM within the defined time period, or the Claimants withdraw said application for Land Use Authorization, or new water permit application described in paragraph 3 or the transfer described in paragraph 5 are not filed with IDWR within the defined time period, or water that is the subject of the transfer described in paragraph 5 is not successfully transferred off of federal public land upon completion of the transfer, then the water right remaining on federal public land (or portion thereof) shall be

deemed forfeited. The United States shall be released and held harmless from loss, injury, damage and/or reduction in value of water rights should the Claimants' application for Land Use Authorization be denied, or the Claimants withdraw their application for Land Use Authorization, or an issued Land Use Authorization is terminated according to its terms, or an issued Land Use Authorization expires and is not renewed, or IDWR does not allow the transfer of all (or portion thereof) of the water that is the subject of the transfer described in paragraph 5 and the water right is deemed forfeited.

7. The parties agree that nothing in this stipulation shall prevent the BLM from administering the use of federal public land and its associated water rights in accordance with applicable law, including modifying or terminating land use authorizations.

8. The parties agree that nothing in this stipulation forecloses future administrative or judicial action by the United States in relief of, or as a consequence of, the unauthorized use of federal public lands, including, but not limited to, actions for past rent, rehabilitation of used land, or trespass.

9. The parties agree that nothing in this stipulation authorizes the use of federal public land or the use of the State's water, therefore the Claimants understand that they are not authorized to farm public land without a Land Use Authorization issued by BLM, nor are they authorized by the State of Idaho to use water on the 9.14 acres described in paragraph 3 above without an approved permit or license.

10. This stipulation comprises the entire agreement and no promise, inducement, or representation other than herein set forth has been made, offered, and/or agreed upon, and the terms of this stipulation are contractual and not merely a recital.

11. This stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation. The parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest. This stipulation does not create a precedent for settlement of any other disputes or objections.

12. This stipulation was entered into and executed voluntarily by all the parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence.

13. All parties agree to bear their own costs and attorney fees.

CLAIMANTS:

KENNETH H. JOHNS

QUEY L. JOHNS

Kenneth Died Jan 8, 2003
KENNETH H. JOHNS

DATED: _____

Quey L. Johns
QUEY L. JOHNS

DATED: 1-23-2011

OBJECTOR:

UNITED STATES OF AMERICA

David Negri
DAVID L. NEGRI
Attorney for the United States

DATED: 3/4/11

CERTIFICATE OF SERVICE

I certify that on _____, 2011, I served a true and correct copy of foregoing **STIPULATION TO RESOLVE OBJECTION; SUBCASE NUMBER: 02-10297** upon the following individuals by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

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Person serving documents