

**STIPULATION TO RESCIND AND VOID THE SETTLEMENT AGREEMENT
REGARDING ABERDEEN-SPRINGFIELD CANAL COMPANY'S BASIN 01 SURFACE
WATER RIGHTS and CONSOLIDATED SRBA SUBCASE NO. 35-2315**

A. DESCRIPTIVE SUMMARY

This Stipulation to Rescind and Void the Settlement Agreement Regarding Aberdeen-Springfield Canal Company's Basin 01 Surface Water Rights and Consolidated SRBA Subcase No. 35-2315 (Stipulation) is made by the Aberdeen-Springfield Canal Company (ASCC), the Idaho Department of Water Resources (IDWR), and the State of Idaho (State). The Stipulation is entered into by the parties for the express purpose of rescinding and voiding the Settlement Agreement Regarding Aberdeen-Springfield Canal Company's Basin 01 Surface Water Rights and Consolidation SRBA Subcase No. 35-2315 (Agreement).

B. RECITALS OF FACT

1. ASCC objected to over one hundred recommendations for ground water rights in Basin 35 submitted by IDWR to the Snake River Basin Adjudication (SRBA) district court. The Basin 35 subcases were consolidated by the SRBA district court under subcase no. 35-2315.
2. ASCC, IDWR, and the State entered into the Agreement in order to address "future recommendations of [IDWR] to the SRBA District Court regarding the surface water rights of [ASCC] in Basin 01 and the issues in Consolidated Subcase No. 35-2315." Agreement at 1. "In the Director's Report for Basin 01, IDWR will recommend 'irrigation' and 'recharge for irrigation' as the purposes of use for [ASCC]'s Basin 01 surface water rights. IDWR will recommend 'recharge for irrigation' as a change in purpose of use under the accomplished transfer provision of Idaho Code § 42-1425." Agreement at 3. "Once IDWR has filed its recommendations for [ASCC]'s Basin 01 water rights . . . and the SRBA District Court has issued partial decrees consistent with this Agreement, [ASCC] will withdraw all objections associated with the Consolidated Subcase No. 35-2315." Agreement at 5. The Agreement also set forth the method by which IDWR would calculate "mitigation credit" attributed to ground water recharge. Agreement at 4.
3. The Agreement was signed by counsel for ASCC on May 31, 2002, by the Director of IDWR on June 5, 2002, and by counsel for the State on June 7, 2002. The Agreement was recorded as instrument number 563578 in the Bingham County Recorder's Office, Blackfoot, Idaho.
4. On May 15, 2006, IDWR filed its Director's Report for Basin 01 with the SRBA district court, which contained recommendations for the surface water rights held by ASCC, 01-23B and 01-297. The recommendations listed "Irrigation" and "Recharge for Irrigation" as purposes of

use. The recommendations contained the following remark: "Right includes accomplished change in purpose of use pursuant to Section 42-1425, Idaho Code." The recommendations also made reference to the calculation of "mitigation credit as defined and set forth in the" Agreement.

5. The recommendations were subsequently objected to by A&B Irrigation District (A&B), American Falls Irrigation District No. 2 (AFRD2), Burley Irrigation District (BID), Milner Irrigation District (Milner), Minidoka Irrigation District (MID), North Side Canal Company (NSCC), Twin Falls Canal Company (TFCC), the United States of America, and the United States Bureau of Reclamation. The State filed a response to the objections.

6. On March 25, 2008, IDWR issued an Amended Director's Report for 01-297, removing all references to recharge, the Agreement, and calculation of mitigation credits.

7. Objections to the Amended Director's Report for 01-297 were filed by A&B, AFRD2, BID, Milner, MID, NSCC, and TFCC. The State filed a response to the objections.

8. The recommendations for 01-23B and 01-297 were litigated in the SRBA district court before Special Master Terrence A. Dolan on motions for summary judgment. On June 11, 2009, Special Master Dolan entered an *Order Partially Granting Aberdeen-Springfield's Motion for Summary Judgment and Denying Surface Water Coalition's Motion for Summary Judgment and Motion to Strike Affidavits*. Special Master Dolan concluded, among other things, that IDWR's recommendation recognizing an accomplished transfer for recharge for irrigation as a purpose of use was permissible.

9. Special Master Dolan's decision was challenged to the presiding judge of the SRBA. On April 4, 2011, the Honorable Eric J. Wildman entered his *Memorandum Decision and Order on Challenge*, in which he reversed Special Master Dolan's decision upholding the recommendation of an accomplished transfer for recharge for irrigation as a purpose of use.

C. STIPULATION TO RESCIND AND VOID THE AGREEMENT

1. In recognition of the above, the parties hereby agree to rescind and void in its entirety the *Settlement Agreement Regarding Aberdeen-Springfield Canal Company's Basin 01 Surface Water Rights and Consolidation SRBA Subcase No. 35-2315*.

2. The parties hereby agree to enter into a Standard Form 5 (SF5) settlement agreement in the SRBA regarding water right 01-23B. The SF5 will remove all references to recharge, the Agreement, and accomplished change in purpose of use.

D. RECORDING

1. The parties hereby agree to record the Stipulation in Bingham County.

E. GOVERNING LAW

1. The parties hereby agree that the Stipulation shall be governed by, and construed in accordance with, the laws of the State of Idaho.

F. ENTIRE STIPULATION

1. This Stipulation sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties, and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written, between them other than are herein set forth.
2. This Stipulation has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding.

G. SUCCESSORS

1. This Stipulation shall bind and inure to the benefit of the respective successors of the parties.

H. EFFECT OF SECTION HEADINGS

1. The section headings appearing in this Stipulation are not to be construed as interpretations of the text but are inserted for convenience and reference only.

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I. DUPLICATE ORIGINALS

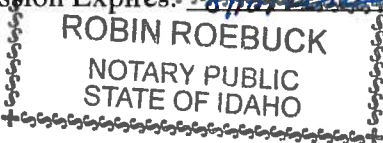
1. This Stipulation is executed in duplicate. Each of the two Agreements with an original signature of each party shall be an original.

IN WITNESS WHEREOF the parties executed this Agreement on the date following their respective signatures.

Entered this 28th day of November, 2011.

Randall C. Budge
Randall C. Budge
Attorney for Aberdeen-Springfield
Canal Company

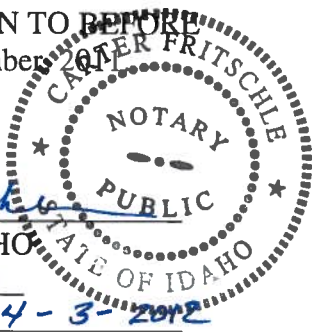
SUBSCRIBED AND SWORN TO BEFORE
ME this 28th day of November, 2011.

Robin Roebuck
NOTARY PUBLIC for IDAHO
Residing at: Proctor
My Commission Expires: 8/18/2012


Entered this 16th day of November, 2011.

Clive J. Strong
Clive J. Strong
Deputy Attorney General
Chief, Natural Resources Division
Attorney for the State of Idaho

SUBSCRIBED AND SWORN TO BEFORE
ME this 16th day of November, 2011.

Carter Fritschle
NOTARY PUBLIC for IDAHO
Residing at: Kuna, ID
My Commission Expires: 4-3-2012


Entered this 16th day of November, 2011.

Gary Spackman
Gary Spackman
Interim Director, Idaho Department of
Water Resources

SUBSCRIBED AND SWORN TO BEFORE
ME this 16th day of November, 2011.

Shari R. Ferree
NOTARY PUBLIC FOR IDAHO
Residing at: Ada County, Idaho
My Commission Expires: July 14, 2015
