

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR TRANSFER 84815
(in the name of Brigham Cook)

**STIPULATION FOR
WITHDRAWAL OF PROTESTS**

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS (this "Stipulation") is made and entered into to be effective as of the latest signature date set forth below, by and between the following parties:

1. **Brigham Cook** (hereinafter, "Cook"); and
2. **A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company** (hereinafter, collectively the "Coalition"); and

Cook and the Coalition may hereinafter collectively be referred to as the "Parties."

RECITALS:

- A. Application for Transfer No. 84815 ("T84815") was filed in March of 2021 by Cook with the Idaho Department of Water Resources ("IDWR" or "Department") which seeks to transfer (amend) WRs 23-11H and 23-11J.
- B. T84815 was protested on various grounds by the Coalition.
- C. In lieu of participating in an administrative hearing for T84815, as provided for under Idaho law, the Parties hereby agree as set forth below, pursuant to IDAPA 37.01.01.612, the result of which is withdrawal of the Coalition's protests and issuance of an approval for T84815.

AGREEMENTS:

1. **Withdrawal of Protests.** Subject to the provisions of this Stipulation, the Coalition hereby withdraws its protests to the Transfer.
2. **Conditions To Be Included On Approvals for the Transfer.** IDWR shall include the conditions set forth on **Exhibit 1** in the water rights subject to the Transfer as described on **Exhibit 1** in addition to any other standard conditions that may be included by IDWR in the final order approving the Transfer.

3. **Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves the protest to T84815 and that the Coalition reserves all rights to protest on the same or similar bases other applications for permit, transfers, and other proceedings that may be initiated by Cook. The Parties shall not use this Stipulation in any other administrative or judicial proceedings for any purpose, other than an action to enforce its terms as provided in paragraph 7 below.
4. **Reliance Upon Statements/Integration and Merger.** The Parties hereto specifically acknowledge that they were represented by counsel in this matter, and agree that other than as is set forth herein, they have executed this Stipulation without relying upon any statements or representations written or oral, as to any statement of law or fact made by any other party or attorney. The Parties to this Stipulation have read and understand the Stipulation and warrant and represent that this Stipulation is executed voluntarily and without duress or undue influence on the part of or on behalf of any party. This Stipulation represents the sole entire and integrated Stipulation by and between the Parties hereto and supersedes any and all prior understandings or agreements whether written or oral except as specifically provided herein.
5. **Successors and Assigns.** This Stipulation shall be binding upon and shall inure to the benefit of each Parties' officers, directors, shareholders, heirs, successors and assigns, and shall be specifically enforceable.
6. **Waiver and Modification.** No provision of this Stipulation may be waived, modified, or amended except by written agreement executed by all the Parties hereto.
7. **Enforcement and Interpretation.** This Stipulation is a valid and binding obligation of the Parties, and their successors or assigns. It shall be admissible and enforceable according to its terms, and venue in any subsequent action shall rest within the State of Idaho. This Stipulation is subject to interpretation in accordance with the laws of the State of Idaho.
8. **Counterparts.** This Stipulation may be executed in counterparts, each of which is deemed an original but all of which constitute one and the same instrument. The signature pages may be detached from each counterpart and combined into one instrument.
9. **Attorneys Fees.** Each party shall bear their own attorney fees, costs, and expenses associated with T84815. In any suit, action or appeal therefrom, to enforce this Stipulation or any term or provision hereof, or to interpret this Stipulation, the prevailing Party shall be entitled to recover all its costs reasonably incurred therein (and on appeal), including reasonable attorneys' fees.

Date: 9-25-2021



Brigham Cook

A&B IRRIGATION DISTRICT, BURLEY
IRRIGATION DISTRICT, MILNER IRRIGATION
DISTRICT, NORTH SIDE CANAL COMPANY,
AND TWIN FALLS CANAL COMPANY

Date: _____

By: Travis Thompson, of the firm Barker, Rosholt
& Simpson, LLP
*Attorneys for A&B Irrigation District, Burley
Irrigation District, Twin Falls Canal Company,
North Side Canal Company, and Milner Irrigation
District*

AMERICAN FALLS RESERVOIR DISTRICT #2
AND MINIDOKA IRRIGATION DISTRICT

Date: _____

By: W. Kent Fletcher, of the firm Fletcher Law
Office
*Attorneys for American Falls Reservoir District #2
and Minidoka Irrigation District*

Date: _____

Brigham Cook

A&B IRRIGATION DISTRICT, BURLEY
IRRIGATION DISTRICT, MILNER IRRIGATION
DISTRICT, NORTH SIDE CANAL COMPANY,
AND TWIN FALLS CANAL COMPANY

Date: 9/23/21



By: Travis Thompson, of the firm Barker, Rosholt
& Simpson, LLP

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Twin Falls Canal Company,
North Side Canal Company, and Milner Irrigation
District*

AMERICAN FALLS RESERVOIR DISTRICT #2
AND MINIDOKA IRRIGATION DISTRICT

Date: September 23, 2021



By: W. Kent Fletcher, of the firm Fletcher Law
Office

*Attorneys for American Falls Reservoir District #2
and Minidoka Irrigation District*

AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into as of the 30 day of August, 2021, by and among Lynn Dixon, a married man dealing with his sole and separate property ("Dixon"), and The Palisade Irrigation Company, Inc., an Idaho non-profit corporation ("Company"). Dixon and the Company may be referred to hereafter as the "parties."

RECITALS:

- A. Dixon is the owner of Water Right Nos. 23-11H ("WR 23-11H") and 23-11J ("WR 23-11J").
- B. 23-11H and 23-11J are authorized to be diverted at the Palisade Irrigation Company Canal headgate.
- C. Dixon is also a shareholder in the Company. Dixon owns 273 shares.
- D. Dixon intends to sell a portion of 23-11H and all of 23-11J to Brigham Cook ("Cook"). Cook filed Transfer No. 84815 (the "Transfer") with the Idaho Department and Water Resources ("IDWR"). Dixon intends to keep his shares in the Company for use on his property.
- E. The Transfer was protested by the Surface Water Coalition (the "Coalition").
- F. In order to resolve the Coalition's protest, the Coalition wants an assurance that if Dixon's shares are sold and moved off his property to a third party, that such shares will only be used on currently irrigated lands with the Company's service area. Accordingly, the parties agree as follows.

AGREEMENTS:

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein, the parties agree as follows:

- 1. **Dixon Shares.** The Company agrees that it will only allow the transfer of Dixon's shares to a third party for use on said third party's lands if such third party's lands are already irrigated as of the date of this Agreement.
- 2. **Miscellaneous.**
 - a. Enforceability. The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.

- b. Governing Law. This Agreement shall be governed by the laws of the State of Idaho.
- c. Successors. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

DIXON:


Lynn Dixon, Individually

COMPANY:

THE PALISADE IRRIGATION COMPANY, INC.

By: _____
Name: _____
Title: _____

way affect the validity or enforcement of the remaining provisions, or any part hereof.

- b. Governing Law. This Agreement shall be governed by the laws of the State of Idaho.
- c. Successors. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

DIXON:

Lynn Dixon, Individually

COMPANY:

THE PALISADE IRRIGATION COMPANY, INC.

By: _____

Name: _____

Title: _____

[Signature]
JOSEPH LUNDQUIST
President

EXHIBIT 1

CONDITIONS

The following conditions shall be included in both portions of WR 23-11H subject to T84815 and that portion of WR 23-11J being moved to Cook's property under T84815:

1. Diversion of water under this right is limited to those times when water is available for diversion under the priority of this right at the original point of diversion from Palisades Creek in the SWSE, Section 26, T01N, R44E.
2. Diversion of water under this right is limited to the quantity of water available under this right at the original point of diversion on Palisades Creek or the quantity of water at the confluence of Palisades Creek and the Snake River, whichever is less.
3. Upon specific notice from the watermaster or the Department, the right holder shall install a measuring device on Palisades Creek near the confluence with the Snake River to measure the amount of water entering the Snake River from Palisades Creek.

The above conditions shall not be included in the portion of WR 23-11J that remains in the Palisades Creek Canal Heading for mitigation purposes.



Prepared by:
Rob Harris

23-11H and 23-11J Summary

23-11H Pre-Transfer													
Year	Water Right No.	Name on Water Right	Basis	Priority Date	Source	Beneficial Use	Individual Diversion Rate Limitation (cfs)	Combined Diversion Rate Limitation (cfs)	Individual Volume Limitation (AFA)	Individual Acre Limitation	Point of Diversion	Palisades Creek Conditions	Notes
2010	23-11J	Lynn Dixon	Decreed	8/15/1893	Palisades Creek	Irrigation	3.54		None	119.5	SWSWSE, Sec. 26, 01N, 44E (Palisades Creek Canal Heading)	None	
2017	23-11J	Lynn Dixon	Decreed	8/15/1893	Palisades Creek	Irrigation	3.54		None	119.5	SESWSW, Sec. 21, 01N, 44E (Dixon Snake River Pump) SWSWSE, Sec. 26, 01N, 44E (Palisades Creek Canal Heading)	Diversion of water from the Snake River is limited to those times water is available for diversion under this right and priority from Palisades Creek at the original point of diversion.	Transfer No. 81162. Also contained the following condition: "To mitigate for injury to other water users caused by the approval of Transfer 81162, the watermaster shall deliver no less than 1.15 cfs of this right into the Palisades Canal to offset historical conveyance losses. Prior to changing the mitigation portion of this right or removing the Palisades Canal point of diversion from this right, the right holder shall obtain an approved transfer from the department and written approval of the change from The Palisade Irrigation Company, Inc."
2019	23-11J	Lynn Dixon	Decreed	8/15/1893	Palisades Creek	Irrigation	3.54		None	119.5	SWSWSE, Sec. 26, 01N, 44E (Palisades Creek Canal Heading)	None	Transfer No. 83027. The mitigation condition in the above cell was removed.

23-11J Post-Transfer (Proposed)													
Year	Water Right No.	Name on Water Right	Basis	Priority Date	Source	Beneficial Use	Individual Diversion Rate Limitation (cfs)	Combined Diversion Rate Limitation (cfs)	Individual Volume Limitation	Individual Acre Limitation	Point of Diversion	PROPOSED Palisades Creek Conditions	Notes
2021	23-11J (portion)	Brigham Cook	Decreed	8/15/1893	Palisades Creek	Irrigation	2.85		None	119.5	NWSW, Sec. 23, 01N, 40E (Cook Pump)	Diversion of water under this right is limited to those times when water is available for diversion under the priority of this right at the original point of diversion from Palisades Creek in the SWSE, Section 26, T01N, R44E. Diversion of water under this right is limited to the quantity of water available under this right at the original point of diversion on Palisades Creek or the quantity of water at the confluence of Palisades Creek and the Snake River, whichever is less. Upon specific notice from the watermaster or the Department, the right holder shall install a measuring device on Palisades Creek near the confluence with the Snake River to measure the amount of water entering the Snake River from Palisades Creek.	
2021	23-11J (portion)	Brigham Cook	Decreed	8/15/1893	Palisades Creek	Mitigation	0.69		None	None	SWSWSE, Sec. 26, 01N, 44E (Palisades Creek Canal Heading)	None	



Prepared by:
Rob Harris

23-11H and 23-11J Summary

23-11H Pre-Transfer													
Year	Water Right No.	Name on Water Right	Basis	Priority Date	Source	Beneficial Use	Individual Diversion Rate Limitation (cfs)	Combined Diversion Rate Limitation (cfs)	Individual Volume Limitation (AFA)	Individual Acre Limitation	Point of Diversion	Palisades Creek Conditions	Notes
2010	23-11H	Snake River Estates LLC	Decreed	8/15/1893	Snake River	Irrigation	1.17		None	37.7	SESWSW, Sec. 21, 01N, 44E (Dixon Snake River Pump)	A measuring device (not totalizing) must be provided at the point where Palisades Creek discharges into Snake River and at the Palisades Canal diversion. The rate of flow diverted under this right shall at no time exceed the rate of flow of Palisades Creek where it discharges into Snake River, nor shall it exceed the rate of flow available at the Palisades Canal diversion located at T01N R44E S26 SWSWSE.	

23-11H Post-Transfer (Proposed)													
Year	Water Right No.	Name on Water Right	Basis	Priority Date	Source	Beneficial Use	Individual Diversion Rate Limitation (cfs)	Combined Diversion Rate Limitation (cfs)	Individual Volume Limitation	Individual Acre Limitation	Point of Diversion	PROPOSED Palisades Creek Conditions	Notes
2021	23-11H (portion)	Snake River Estates LLC	Decreed	8/15/1893	Snake River	Irrigation	0.35		None	11.3	SESWSW, Sec. 21, 01N, 44E (Dixon Snake River Pump)	Diversion of water under this right is limited to those times when water is available for diversion under the priority of this right at the original point of diversion from Palisades Creek in the SWSE, Section 26, T01N, R44E. Diversion of water under this right is limited to the quantity of water available under this right at the original point of diversion on Palisades Creek or the quantity of water at the confluence of Palisades Creek and the Snake River, whichever is less. Upon specific notice from the watermaster or the Department, the right holder shall install a measuring device on Palisades Creek near the confluence with the Snake River to measure the amount of water entering the Snake River from Palisades Creek.	This portion is being retained by Lynn Dixon for use on his property.
2021	23-11H (portion)	Brigham Cook	Decreed	8/15/1893	Snake River	Irrigation	0.82		None	26.4	NWSW, Sec. 23, 01N, 40E (Cook Pump)	Diversion of water under this right is limited to those times when water is available for diversion under the priority of this right at the original point of diversion from Palisades Creek in the SWSE, Section 26, T01N, R44E." Diversion of water under this right is limited to the quantity of water available under this right at the original point of diversion on Palisades Creek or the quantity of water at the confluence of Palisades Creek and the Snake River, whichever is less. Upon specific notice from the watermaster or the Department, the right holder shall install a measuring device on Palisades Creek near the confluence with the Snake River to measure the amount of water entering the Snake River from Palisades Creek.	This portion will be moved to Brigham Cook's property.

23-11J Pre-Transfer													
Year	Water Right No.	Name on Water Right	Basis	Priority Date	Source	Beneficial Use	Individual Diversion Rate Limitation (cfs)	Combined Diversion Rate Limitation (cfs)	Individual Volume Limitation	Individual Acre Limitation	Point of Diversion	Palisades Creek Conditions	Notes