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WATER RESOURCES
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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Protestants

Ballentyne Ditch Company, Boise Valley Irrigation Ditch
Company, Canyon County Water Company, Eureka Water
Company, Farmers' Co-Operative Ditch Company, Nampa
& Meridian Irrigation District, Middleton Mill Ditch Company, Middleton Irrigation
Association, Inc., New Dry Creek Ditch
Company, Pioneer Ditch Company, Pioneer Irrigation District, Settlers Irrigation District
and Thurman Mill Ditch Company

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 63-35002 IN THE NAME OF
BOISE STATE UNIVERSITY

**STIPULATION TO RESOLVE
PROTEST AND WITHDRAWAL OF
PROTEST**

COME NOW, Applicant Boise State University (hereinafter "Applicant"), and
Protestants Ballentyne Ditch Company, Boise Valley Irrigation Ditch Company, Canyon County
Water Company, Eureka Water Company, Farmers' Co-operative Ditch Company, Nampa &
Meridian Irrigation District, Middleton Mill Ditch Company, Middleton Irrigation Association,
Inc., New Dry Creek Ditch Company, Pioneer Ditch Company, Pioneer Irrigation District,
Settlers Irrigation District and Thurman Mill Ditch Company, by and through their attorneys of
record Sawtooth Law Offices, PLLC, and the City of Boise (collectively, the "Protestants"), and
hereby submit this *Stipulation to Resolve Protests and Withdrawal of Protests* (hereinafter
"*Stipulation*") in the above-captioned matter.

Applicant and Protestants hereby stipulate and agree as follows:

1. Applicant and Protestants agree that the Permit for Water Right No. 63-35002 may be granted contingent upon the following conditions be included in Applicant's final Permit to Appropriate Water for Water Right No.63-35002:
 - a. The Conditions which shall be included in Applicant's final Permit to Appropriate Water for Water Right No. 63-35002 are provided in **Exhibit A** attached hereto and by this reference incorporated herein.
2. Applicant and Protestants further agree that the following conditions may not be conditions included in Applicant's final Permit to Appropriate Water for Water Right No. 63-34926, although this *Stipulation* shall be included in the water right backfile for this water right and this *Stipulation* shall be referenced in the conditions for Applicant's final Permit to Appropriate Water for Water Right No. 63-34926, but the following conditions shall be binding upon the Applicant and its successors and assigns, and shall be enforceable conditions by the Protestant and their successors and assigns:
 - a. The Conditions which are the subject of the Agreement between Applicant and Protestants are provided in **Exhibit B** attached hereto and by this reference incorporated herein.
3. Protestants hereby withdraw their Protests filed in the above-captioned matter based upon the conditions referenced above. Applicant shall notify Protestants if any of the conditions provided in **Exhibit A** are changed or proposed to be changed. The filing of this *Stipulation* shall serve as Protestants' withdrawal of their Protests.

Signature Pages Follow

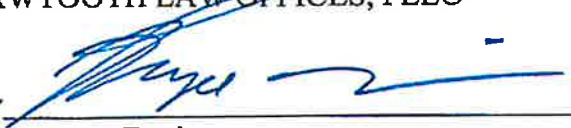
DATED this 19 day of ^{August}~~July~~, 2021.

BOISE STATE UNIVERSITY

By Joellen DiNucci
Mark Heil Joellen DiNucci
~~Vice President and CFO~~
Associate Vice President

DATED this 11th day of ~~July~~ ^{August}, 2021.

SAWTOOTH LAW OFFICES, PLLC

By 

S. Bryce Farris

Attorneys for Protestants Ballentyne Ditch Company,
Boise Valley Irrigation Ditch Company, Canyon
County Water Company, Eureka Water Company,
Farmers' Co-Operative Ditch Company, Nampa &
Meridian Irrigation District, Middleton Mill Ditch
Company, Middleton Irrigation Association, Inc., New
Dry Creek Ditch Company, Pioneer Ditch Company,
Pioneer Irrigation District, Settlers Irrigation District
and Thurman Mill Ditch Company

DATED this 18th day of ~~July~~^{August}, 2021.

JAYME SULLIVAN
BOISE CITY ATTORNEY

By 

Mary Grant
Attorneys for Protestant City of Boise

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of August, 2021, I caused a true and correct copy of the foregoing **STIPULATION TO RESOLVE PROTEST AND WITHDRAWAL OF PROTEST** to be served by the method indicated below, and addressed to the following:

IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720
F (208) 287-6700

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
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Boise State University
Office of the President
1910 University Dr.
Boise ID 83725
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mattwilde@boisestate.edu
matthewmcgee@boisestate.edu

- ☒ U.S. Mail, Postage Prepaid
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SPF Water Engineering
C/O Lori Graves
300 E. Mallard Dr Ste 350
Boise, ID 83706-6660
(208) 383-4140
lgraves@spfwater.com

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
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- ☐ Email

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C/O Michael Lawrence
C/O Charlie S Baser
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Suez Water Idaho Inc.
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- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email

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Mary Grant
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- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email


Matthew J. McGee

EXHIBIT A
STANDARD CONDITIONS

IDWR Conditions

1. Proof of application of water to beneficial use shall be submitted on or before << 5 yrs from approval>>.
2. Subject to all prior water rights.
3. Aesthetic and wildlife uses are for flow through water associated with the Diane Moore Nature Center.
4. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.
5. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works at the point of diversion and a measuring device at the point of return to the Boise River of a type and at a location acceptable to the Department as part of the diverting works. The point of return shall be located in or near Township 02N, Range 03E, Section 4, NENE.
6. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water rights will be changed to show that diversion and use of water is not authorized because the rights, or portion thereof, are being dedicated to mitigation by non-use. The mitigating rights may also include a condition stating that the mitigation by non-use is for the benefit of this right.

<u>Right No.</u>	<u>Use Changed to</u> <u>Mitigation by Non-Use</u>	<u>Mitigation</u> <u>Rate (cfs)</u>	<u>Mitigation</u> <u>Acres</u>
63-185B	Irrigation	0.08	4.0

The land that will no longer be irrigated under the mitigating rights is located within the service area of South Boise Water Company. Additionally, associated rights 63-148C, 63-150, 63-185A, 63-185B, 63-2392C and 63-2392D for the South Boise Water Company service area will be modified to reduce authorized irrigation acreage by 4.0 acres to prevent enlargement.

If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable at a rate equal to or greater than 60% of the face value due to a shortage of water or a priority call, the right holder shall cease diversion, shall rent water from the Boise River Rental Pool, or shall otherwise mitigate for the depletion of water caused by this water use.

7. This right does not authorize the diversion or use of water released from Lucky Peak Reservoir for streamflow maintenance purposes pursuant to water right 63-3618. Pursuant to water right 63-3618, the quantity, duration, and timing of streamflow maintenance releases from Lucky Peak Reservoir are determined according to joint written instructions from the United States Bureau of Reclamation and the Idaho Department of Fish and Game to the Idaho Department of Water Resources.
8. Any obstruction in the Boise River channel for diversion of water under this right must provide for watercraft and fish passage. The right holder must bypass sufficient flows in the Boise River at the point of diversion to accommodate watercraft navigation and fisheries values in the Boise River downstream of the diversion. The quantity of the bypass flow may be established in the future by the filing of a petition with the Department to establish the bypass flows and subsequent proceedings as described in the Department's Rules of Procedure.
9. This right does not grant any right-of-way or easement across the land of another.
10. Diversions under this right into the side channel may occur only when flows in the existing main channel of Boise River exceed 600 cubic feet per second, as measured at the USGS Glenwood Bridge stream gage (Site No. 13206000).
11. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestants and the right holder under separate agreements, dated _____, 2021, and dated _____, 2021, respectively, to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions shall be the responsibility of the protestant and the water right holder.

EXHIBIT B
SIDE AGREEMENT TERMS

1. Construction Activities. Construction of the diversion shall occur only between November 1 and the following February 28, unless otherwise agreed upon by the parties. Furthermore, construction activities that may impact water flow or quality characteristics in the existing main channel of the Boise River at the Surprise Valley Pump Station or to downstream users, diversions including, but not limited to, any party to this Stipulation, shall occur only between November 1 and the following February 28, unless otherwise agreed upon by the parties.
2. Limited Diversion. Diversions under this right into the side channel may occur only when flows in the existing main channel of Boise River exceed 600 cubic feet per second, as measured at the USGS Glenwood Bridge stream gage (Site No. 13206000). During the irrigation season, the right holder shall maintain contact with the Water District 63 Watermaster to verify the flows at the USGS Glenwood Bridge stream gage exceed 600 cubic feet per second and said flows are adequate to divert water under this right.
3. Maintenance and Repair. Maintenance or repair of the diversion and side channel shall occur only between November 1 and the following February 28, unless otherwise agreed upon by the parties.
4. Consumptive Use Mitigation: Use of the water under this right shall be non-consumptive. Irrigation season consumptive use shall be mitigated to offset evaporation and transpiration losses created by this right using South Boise Water Company shares. As part of the approval of this permit, the Department has approved a mitigation plan allowing the right holder to use South Boise Water Company water for mitigation. If mitigation from South Boise Water Company shares is not authorized or available or adequate to offset depletions/losses then additional mitigation will be required of the right holder in order for the right holder to divert water under this right. If sufficient mitigation is not provided or cannot be provided then the right holder shall cease diverting water under this water right.
5. Non-consumptive Use: The return flow discharged from the side channel back to the Boise River, plus the mitigation from South Boise Water Company, must be equal to or greater than the diversion of this right from the Boise River as determined by the watermaster. In the event the measurement of the return flow is less than the diversion of this right from the Boise River, the right holder shall, within twenty-four hours, modify operations so that diversions do not exceed the return flow. If the deficit continues thereafter for more than twenty-four hours, as determined by subsequent measurements, diversions shall cease until the watermaster approves a plan from the right holder to comply with this condition. Under the compliance plan, the right holder shall not resume diverting water under this right until either additional mitigation is provided to offset any measured shortfall or the right holder can demonstrate that the return flow discharged back to the Boise River will be equal to or greater than the diversion of this right from the Boise River. To avoid nuisance reductions or curtailments, the difference between diversion inflow and corresponding outflow must be greater than the accepted accuracy of the measurement devices to be considered a "shortfall."

6. Insufficient Flows because of Diversions: Diversions under this right shall be managed so as to not interfere with the physical ability to divert from the Surprise Valley Pump Station or any other senior in-priority downstream diversion, including, but not limited to, the diversions of the parties to this Stipulation. At any time the right holder is notified by the watermaster that, due to exercise of this water right, there are insufficient flows in the Boise River to allow full operation of the Surprise Valley Pump Station to divert senior in-priority water rights or any other senior in-priority downstream diversion, the right holder shall, within twenty-four hours, cease diverting water under this right until there are sufficient flows in the Boise River to satisfy the above-referenced senior rights, or the right holder can demonstrate to the watermaster that diversion under this right will not interfere with or reduce the flows necessary to fully satisfy the above-referenced senior rights.

7. Measurement of Diversion and Return Flow. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works at the point of diversion and a measuring device at the point of return to the Boise River of a type and at a location acceptable to the Department as part of the diverting works. The point of return shall be located in or near Township 02N, Range 03E, Section 4, NENE.