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OCT 22 2020

Department of Water Resources
Eastern Region

Attorneys for Rocky Mountain Water Exchange, LLC

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

IN THE MATTER OF APPLICATIONS
FOR TRANSFER 83471, 83915 AND
83918 IN THE NAME OF ROCKY
MOUNTAIN WATER EXCHANGE

**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. **Rocky Mountain Water Exchange, LLC** (hereinafter, "RMWE");
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
3. **Jefferson Greens Estates Homeowners Association, Inc.** (the "HOA").¹

RMWE, the Coalition, and the HOA may hereinafter collectively be referred to as the "Parties."

RECITALS:

- A. Application for Transfer No. 83471 ("T83471") was filed on July 19, 2019 by RMWE with the Idaho Department of Water Resources ("IDWR" or "Department") which seeks to transfer 3.2 acres of a ground water right, WR 27-7545.

¹ The HOA is not a party to this contested case, but this Stipulation affects it as the intended beneficiary of the water rights subject to the Transfers (defined below), and for that reason, the HOA is listed here as a party and has signed below in order to be bound by this Stipulation.

- B. Application for Transfer No. 83915 ("T83915") was filed by RMWE on February 24, 2020 with the Department which seeks to transfer 17.8 acres of a Snake River water right, WR 01-7017.
- C. Application for Transfer No. 83918 ("T83918") was filed by RMWE on February 24, 2020 with the Department which seeks to transfer 17.8 acres of a ground water right, WR 35-7720.
- D. The proposed new place of use identified in T83471, T83915, and T83918 (collectively the "Transfers") are residential lots within the Jefferson Greens Estates Subdivision (the "Subdivision").
- E. The Subdivision has an appurtenant domestic water right, WR 25-14162, which authorizes diversion of ground water for non-irrigation purposes only. WR 25-14162 includes the following under its Conditions of Approval:

Irrigation water for lawns, gardens, landscaping, and common areas is provided by a separate pressurized surface water system with appurtenant canal shares of the North Rigby Irrigation Canal Company, Inc. (Stock Certificate No. 216, issued on 8/24/2000).
- F. Each of the Transfers was protested on various grounds by the Coalition.
- G. In lieu of participating in administrative hearings concerning the Transfers, as provided for under Idaho law, the Parties hereby agree as set forth below, the result of which is withdrawal of the Coalition's protests and issuance of approvals of the Transfers.

AGREEMENTS:

- 1. **Withdrawal of Protests.** Subject to the provisions of this Stipulation, the Coalition hereby withdraws its protests to the Transfers.
- 2. **Conditions To Be Included On Approvals for the Transfers.** IDWR shall include the conditions set forth on **Exhibit 1** in the water rights subject to the Transfers in addition to any other standard conditions that may be included by IDWR in the final order approving the Transfers.
- 3. **Combined Water Supply.** The Parties agree that 10 shares of stock in the North Rigby Irrigation Canal Company, Inc., associated with a large portion of the Subdivision, and the portions of WR 27-7545, WR 01-7017, and WR 35-7220 subject to the Transfers, shall be combined and are hereafter prohibited from being transferred independently of one another. The HOA further agrees that the 10 shares will remain appurtenant to the Subdivision and cannot be seasonally or permanently transferred to other places of use within the North Rigby Irrigation Canal Company, Inc. This combined water supply is reflected in one of the proposed transfer approval conditions. Nothing in this Stipulation

shall prevent additional water rights from being transferred to the Subdivision to be combined with these water entitlements to provide for additional irrigation. There are 46.3 acres of the North Rigby Canal and Irrigation Canal Company, Inc. service area that overlaps with a large portion of the Subdivision. Based on the number of outstanding shares and authorized irrigated acres within the canal company, 1 share is authorized to irrigate approximately 5 acres, and for 10 shares, the total authorized surface water irrigated acres is approximately 50 acres. The HOA shall be authorized to move additional ground water rights to the subdivision to be stacked with the 10 shares and water rights described in the Transfers, provided that such additional ground water rights are similarly conditioned, and the HOA shall not be required to bring in additional canal shares, unless the total number of ground water right acres moved to the subdivision exceeds 46.3 acres within the canal company area that overlaps with the Subdivision.

4. **Use of Surface Water For Irrigation of A Minimum of Two Subdivision Lots.** The HOA agrees that it will ensure that two (2) of the subdivision lots within the Subdivision located within the service area of the North Rigby Irrigation and Canal Company, Inc. shall be irrigated with surface water. On or before May 1, 2021, the HOA shall identify the two (2) lots designated as irrigated with surface water, and if such lot or lots are developed, the surface water irrigation system shall be installed and utilized no later than May 1, 2021, and evidence of the installed surface water irrigation system shall be provided to the Coalition. If the lot or lots are not developed, the HOA shall provide evidence of the installed surface water irrigation system when such lot or lots are developed. In the event the surface water irrigated lot designations change in the future, the HOA shall provide notice of such change to the Coalition within 30 days of such change. Nothing herein shall prevent additional subdivision lots from using surface water for irrigation purposes, as this provision only requires a minimum of two lots irrigated with surface water.
5. **Amendment of Condition No. 3 of WR 25-14162.** The Coalition was a party to a stipulation that added condition no. 3 to WR 25-14162. The parties stipulate and agree and instruct IDWR to amend condition no. 3 of WR 25-14162 as follows:

Irrigation water for lawns, gardens, landscaping, and common areas is provided by either a separate pressurized surface water system with appurtenant canal shares of the North Rigby Irrigation Canal Company, Inc. and/or ground water rights transferred to the Jefferson Greens Estates Subdivision.

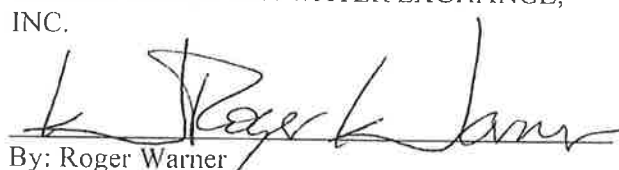
6. **Future Transfers to the Subdivision.** The Coalition shall not protest any future transfers of WR 1-7017, WR 35-7720, and/or WR 35-2604 that propose to move such rights to the Subdivision, provided that the water rights in such future transfer(s) are combined with the water rights subject to the Transfers and the shares of North Rigby Irrigation Canal Company, Inc. described herein (for the lands covered by such canal company) and are similarly conditioned.

7. **Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves the protests to T83471, T83915, and T83918, 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 RMWE except for those that proposed to transfer water rights to the Subdivision as described in paragraph 6 above. 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 11 below.
8. **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.
9. **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.
10. **Waiver and Modification.** No provision of this Stipulation may be waived, modified, or amended except by written agreement executed by all the Parties hereto.
11. **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.
12. **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.
13. **Attorneys Fees.** 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.

[SIGNATURES ON FOLLOWING PAGE]

ROCKY MOUNTAIN WATER EXCHANGE,
INC.

Date: 10/14/20


By: Roger Warner
Its: Manager


JEFFERSON GREENS ESTATES
HOMEOWNERS ASSOCIATION, INC.

Date: _____

By: Dale Michaelson
Its: President

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

Date: October 20, 2020


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*

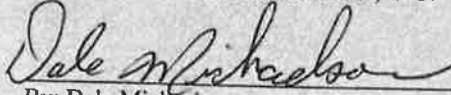
ROCKY MOUNTAIN WATER EXCHANGE,
INC.

Date: _____

By: Roger Warner
Its: Manager

JEFFERSON GREENS ESTATES
HOMEOWNERS ASSOCIATION, INC.

Date: 10/16/2020



By: Dale Michaelson
Its: President

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IRRIGATION DISTRICT, MILNER IRRIGATION
DISTRICT, NORTH SIDE CANAL COMPANY,
AND TWIN FALLS CANAL COMPANY

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By: Dale Michaelson
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IRRIGATION DISTRICT, MILNER IRRIGATION
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AND MINIDOKA IRRIGATION DISTRICT

Date: October 20, 2020



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

EXHIBIT 1
CONDITIONS TO BE INCLUDED IN WATER RIGHTS
SUBJECT TO TRANSFER NOS. 83471, 83915, and 83918

1. 10 shares of stock in the North Rigby Irrigation Canal Company, Inc., which are appurtenant to portion of the Jefferson Greens Estates Subdivision, right no. [child right of WR 27-7545], right no. [child right of WR 01-7017], and right no. [child right of WR 35-7220] shall be combined and are prohibited from being transferred independent of one another. This condition does not prevent additional rights from being transferred to the Jefferson Greens Estates Subdivision to be combined with these water entitlements and similarly conditioned to provide for additional irrigation within the subdivision.
2. The diversion and use of water authorized in transfer nos. 83471, 83915, and 83918 may be subject to additional conditions and limitations agreed to by the protestants and the right holder under a separate agreement 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.