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Attorneys for Bear River Water Users Association, Inc. and Cub River Irrigation Company

# STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR PERMIT NO. 13-8042

In the name of Weston Creek Irrigation Company

STIPULATION FOR WITHDRAWAL OF PROTEST

This Stipulation for Withdrawal of Protest ("Stipulation") is entered into between Weston Creek Irrigation Company ("Applicant"), Bear River Water Users Association, Inc. ("BRWUA"), and Cub River Irrigation Company ("Cub River Irrigation"). Applicant, BRWUA and Cub River Irrigation may be referred to herein collectively as the "parties" or individually as a "party."

### Background

- A. Applicant filed Application for Permit No. 13-8042 (the "Application") with the Idaho Department of Water Resources (the "Department") on September 3, 2019. Applicant subsequently amended the Application on February 28, 2020.
- B. BRWUA and Cub River Irrigation each filed protests against the Application.
- C. The parties desire to fully resolve the protests of BRWUA and Cub River Irrigation in accordance with terms and conditions of this Stipulation.

### Agreement

- 1. **Issuance of Permit.** The parties agree that the Department may approve the Application by issuing a permit with an annual volume of 20.0 acre feet and a period of use for "diversion to storage" of 10/16 to 04/30 as set forth in the draft permit attached as *Exhibit A*.
- 2. Settlement of Protests. The Department's issuance of a permit in accordance with *Exhibit A* shall fully and finally resolve the protests filed by BRWUA and Cub River Irrigation.
- 3. Representations and Warranties. Each party represents and warrants to the other parties that: (a) they did or had ample opportunity to consult with legal counsel in connection with this Stipulation; (b) they have read and understand this Stipulation and execute it voluntarily and without duress or undue influence; and (c) this Stipulation represents the entire agreement between the parties and supersedes all prior understandings or agreements between them, whether written or oral, concerning the subject matter hereof.
- 4. Reservation of Rights. This Stipulation does in no way waive the rights of BRWUA and Cub River Irrigation to demand administration of any water right issued under the Application in accordance with the prior appropriation doctrine as established by Idaho law.
- 5. Successors and Assigns. This Stipulation shall be binding upon and inure to the benefit of each party and its successors and assigns.
- **6. Waiver and Modification.** No provision of this Stipulation may be waived, modified, or amended except by written agreement executed by all parties.
- 7. Enforcement and Interpretation. This Stipulation is a valid and binding obligation of the parties and shall be enforceable according to its terms. Venue in any action involving this Stipulation shall rest in Franklin County, Idaho. This Stipulation shall be interpreted in accordance with the laws of the State of Idaho.
- 8. Counterparts. This Stipulation may be executed in counterparts, which when taken together shall constitute one and the same instrument. Signature pages may be detached from each counterpart and combined into one instrument.
- 9. Electronic Signatures. Electronic signatures and signatures transmitted by fax or email shall be valid and effective to bind the party so signing.
- 10. Filing. This Stipulation shall be filed with the Department but shall not recorded in the real property records of any county.

# Date: 4/30/2020 By: Greg Bingham, President BEAR RIVER WATER USERS ASSOCIATION, INC. Date: 4/30/2020 By: T.J. Budge Racine Olson, PLLP Attorneys for Bear River Water Users Association, Inc. Cub River Irrigation Company Date: 4/30/2020 By: Subsequence Subsequence

T.J. Budge

Racine Olson, PLLP

Attorneys for Cub River Irrigation Company

# **EXHIBIT** A

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# State of Idaho Department of Water Resources

# Permit to Appropriate Water (4/2/20 Draft)

No. 13-8042

Priority: September 03, 2019

**Maximum Diversion Rate:** 3.00 CFS **Maximum Diversion Volume:** 20.0 AF

This is to certify that

WESTON CREEK IRRIGATION CO

PO BOX 1

WESTON ID 83286-0001

has applied for a permit to appropriate water from:

Source: WESTON CREEK

Tributary: BEAR RIVER

and a permit is APPROVED for development of water as follows:

Beneficial UsePeriod of UseRate of DiversionAnnual VolumeIRRIGATION STORAGE01/01 to 12/3120.0 AFIRRIGATION FROM STORAGE04/20 to 09/3020.0 AFDIVERSION TO STORAGE10/16 to 04/303.00 CFS

### Location of Point(s) of Diversion

WESTON CREEK SW1/4 SW1/4, Sec. 13, Twp 16S, Rge 38E, B.M. FRANKLIN County

### Place of Use: IRRIGATION STORAGE

Twp		Sec	NE				NW				SW				SE			
			NE	NW	SW	SE												
168	38E	13												Х				

### Conditions of Approval

- 1. Proof of application of water to beneficial use shall be submitted on or before May 01, 2025.
- 2. Subject to all prior water rights.
- 3. This right does not authorize the diversion of natural flow from Weston Creek for irrigation storage between May 1 and October 15. The right holder may, however, use the storage pond authorized under this right to control and store water released from Weston Creek Reservoir and delivered through the Weston Creek channel during that time period.
- 4. This right does not authorize the irrigation of land not previously irrigated under water rights 13-948, 13-949 or 13-2293.
- 5. Irrigation from storage place of use is within the area served by Weston Creek Irrigation Company.
- 6. 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. 11.
- 7. Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.
- 8. This right does not grant any right-of-way or easement across the land of another.

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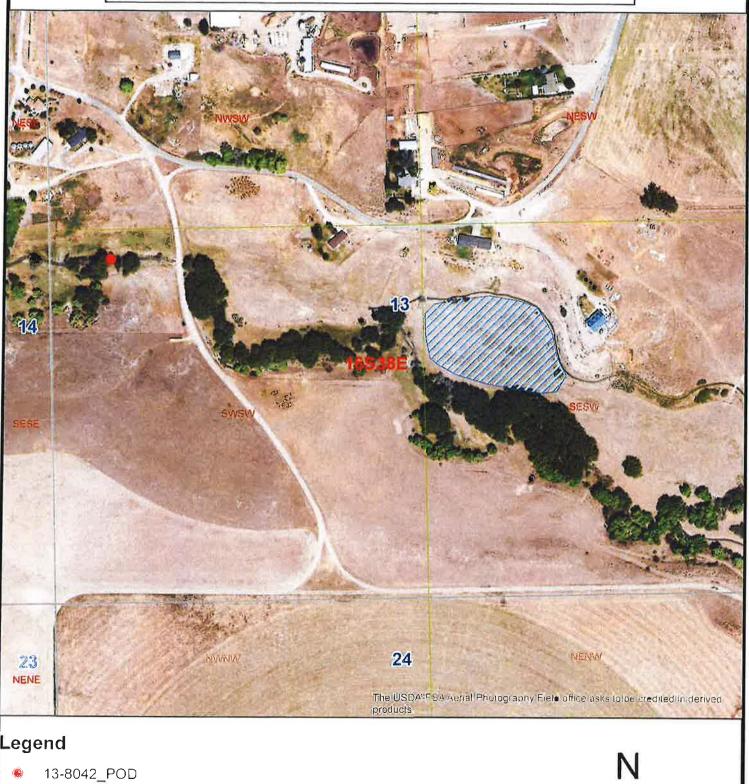
## State of Idaho Department of Water Resources

# Permit to Appropriate Water (4/2/20 Draft)

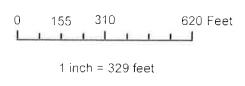
No. 13-8042

This permit is issued pursuant to the provision	ns of Idaho Code § 42-204.	
Signed this day of	, 20	
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		,
	JAMES CEFALO Eastern Regional Manager	

# Application 13-8042 Ammended Map









### **CERTIFICATE OF SERVICE**

I certify that on this the 30th day of April, 2020 the foregoing document was served on the following persons in the manner indicated.

Signature of person mailing form U.S. Mail/Postage Prepaid Idaho Department of Water Resources Facsimile Overnight Mail Hand Delivery ⊠ E-mail

james.cefalo@idwr.idaho.gov Greg Bingham, President Weston Creek Irrigation Company 3753 S. 3200 W. Weston, Idaho 83286 gonfarmn@gmail.com

James Cefalo

Eastern Regional Office

Idaho Falls, Idaho 83402

900 N. Skyline Drive, Suite A