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*Attorney for Fremont Madison Irrigation District*

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

**IN THE MATTER OF APPLICATION  
FOR PERMIT NO. 21-13144 IN THE  
NAME OF FREMONT MADISON  
IRRIGATION DISTRICT**

**STIPULATION FOR  
WITHDRAWAL OF PROTESTS**

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS (this “Stipulation”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between **Fremont Madison Irrigation District**, (hereinafter, “**FMID**”), and protestants to Application for Permit No. 21-13144 known as the **Surface Water Coalition**, consisting of **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 “**SWC**”) AND ALSO, **Henry’s Fork Foundation** (hereinafter, called “**HFF**”), **Idaho Conservation League** (hereinafter, “**ICL**”), the **United States Department of the Interior, Bureau of Land Management** (hereinafter, “**BLM**”), **Greater Yellowstone Coalition** (hereinafter “**GYC**”), and the **Idaho Department of Fish and Game** (hereinafter, “**IDFG**”). **FMID**, **HFF**, **ICL**, **BLM**, **GYC**, **IDFG**, and the **SWC** may hereinafter collectively be referred to as the “Parties.”

**RECITALS:**

- A. Application for Permit No. **21-13144** (hereinafter, simply “**21-13144**”) seeks a water right from the Idaho Department of Water Resources (“**IDWR**”) for 1,200 cfs with a priority date of 05/10/2012 for ground water recharge purposes in Fremont County, Idaho.
- B. On July 23rd, 2012, after **21-13144** was advertised pursuant to Idaho law, it was protested on various grounds by the **SWC**. **21-13144** was also protested by the **HFF**, **ICL**, **BLM**, **GYC**, **IDFG**, and the U.S. Bureau of Reclamation.

- C. FMID desires to conduct managed ground water recharge both within the canal companies located with FMID's boundaries and at off-canal sites with recharge water delivered through the said FMID canal companies. In each instance, it is proposed that the ground water recharge will be measured and monitored on a continuous basis. A map of the proposed recharge places of use primarily within the FMID boundaries is attached hereto as **Exhibit 1**.
- D. Pursuant to Idaho Code § 42-602 *et seq.*, the State of Idaho, acting through IDWR, is charged with the orderly distribution of water consistent with the prior appropriation doctrine within the State of Idaho. Idaho Water District #1 ("Water District #1") is the instrumentality by which IDWR administers water rights in the Upper Snake River Basin.
- E. Idaho Code § 42-234 vests IDWR with the authority to grant permits and licenses for ground water recharge subject to later control from the director:

(4) The director of the department of water resources may regulate the amount of water which may be diverted for recharge purposes and may reduce such amount, even though there is sufficient water to supply the entire amount originally authorized by permit or license. To facilitate necessary financing of an aquifer recharge project, the director may fix a term of years in the permit or license during which the amount of water authorized to be diverted shall not be reduced by the director under the provisions of this subsection.

(5) To ensure that other water rights are not injured by the operations of an aquifer recharge project, the director of the department of water resources shall have the authority to approve, disapprove or require alterations in the methods employed to achieve ground water recharge. In the event that the director determines that the methods of operation are adversely affecting existing water rights or are creating conditions adverse to the beneficial use of water under existing water rights, the director shall order the cessation of operations until such alterations as may be ordered by the director have been accomplished or such adverse effects otherwise have been corrected.

Idaho Code § 42-234(4)-(5).

- F. Idaho Code § 42-1737(a) requires the approval of ground water recharge projects by the Idaho Water Resource Board for project proposals that seek "the diversion of natural flow water appropriated pursuant to section 42-234, Idaho Code, for a managed recharge project in excess of ten thousand (10,000) acre-feet on an average annual basis . . ."
- G. In lieu of participating in administrative hearings concerning **21-13144**, as provided for under Idaho law, the Parties hereby agree as set forth below, the result of which is withdrawal of the Protestants' protests and issuance of a permit for development of **21-**

13144.

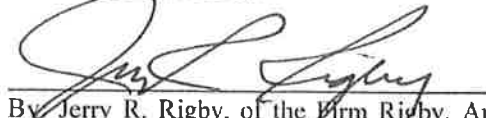
**AGREEMENTS:**

1. **Conditions To Be Included On Permit for 21-13144.** IDWR shall include the following conditions, in addition to any others that may be included by IDWR or otherwise agreed to with the other protestants (provided they do not conflict with the following conditions) in the final order issuing Permit No. **21-13144**:
  - a. "This right is subject to all applicable provisions of Idaho Code § 42-234."
  - b. "Subject to all prior rights."
  - c. "Water may be diverted for recharge under this right when in priority and 2,700 c.f.s. or more is flowing past Minidoka Dam."
  - d. "The diversion of water under this right shall not exceed ten thousand (10,000) acre-feet on an average annual basis," without first obtaining approval from the Idaho Water Resource Board pursuant to Idaho Code § 42-1737(a).
  - e. Water right 21-13144 will be used within the FMID authorized place of use. However, it may also be used on BLM lands outside of FMID's authorized place of use if FMID contracts with Egin Bench Canal Company or other applicable Canal Companies when water under **21-13144** is delivered to lands allowed for recharge by BLM. This condition does not modify the place of use authorized under this water right.
  - f. Subject to a written waiver of this condition granted by the Henrys Fork Drought Management Committee (or its successor in interest), the water right acquired under this permit may be diverted only when the flows in the Henry's Fork measured at the St. Anthony gauge (USGS 13050500) reach or exceed 1,000 c.f.s.
  - g. Any and all pumps used to divert water from the Henrys Fork under this right shall use an electric power source.
2. **Issuance of Proposed Order and Subsequent Withdrawal of Protests.** The Parties shall instruct IDWR to issue a proposed order including the conditions set forth in Paragraph 1 as set forth herein. The Parties shall have fourteen (14) days thereafter to object to the language in the proposed order by filing notice of such objection with IDWR if the conditions set forth in Paragraph 1 are not included. If no objections are received within the fourteen (14) day time period, the protests of the Protestants shall be deemed withdrawn, and IDWR shall thereafter issue a final order approving **21-13144** consistent with this Agreement. FMID may submit a copy of this executed Stipulation to IDWR and notify IDWR of this procedure and withdrawal of protests. If IDWR does not include the conditions agreed to in Paragraph 1, this stipulation shall be deemed null and void and the

Parties will retain their respective rights in this contested case, unless the Parties otherwise agree to IDWR's conditions.

3. **Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves the protests to **21-13144**, and that the Protestants reserve all rights to protest other applications for ground water recharge permits, transfers, and any other proceedings in the future. 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 8 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 Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any party. This Agreement 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 Agreement 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 Agreement may be waived, modified, or amended except by written agreement executed by all of 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.

FREMONT MADISON IRRIGATION DISTRICT



By Jerry R. Rigby, of the firm Rigby, Andrus &  
Rigby Law, PLLC

*Attorneys for Fremont Madison Irrigation District*

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



for

By: John Simpson, 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



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

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



Brandon Hoffner, Executive Director  
*Henrys Fork Foundation*

Idaho Conservation League

*Marie Callaway Kellner*

By: Marie Callaway Kellner, Water Associate  
*Idaho Conservation League*

United States Department of the Interior  
Bureau of Land Management

By: \_\_\_\_\_

Greater Yellowstone Coalition

By: \_\_\_\_\_

Idaho Department of Fish and Game

*Andy Vonder*  
By: Deputy Attorney General

Idaho Conservation League

*Marie Callaway Kellner*

By: Marie Callaway Kellner, Water Associate  
*Idaho Conservation League*

United States Department of the Interior  
Bureau of Land Management

By: \_\_\_\_\_

Greater Yellowstone Coalition

*C. Wolf Drinn*

By: \_\_\_\_\_

Idaho Department of Fish and Game

By: \_\_\_\_\_



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls ID 83402-1718

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**BRAD LITTLE**  
Governor

**GARY SPACKMAN**  
Director

September 12, 2019

FREMONT-MADISON IRRIGATION DISTRICT  
PO BOX 15  
ST. ANTHONY, ID 83445-0015

RE: Application for Permit 21-13144

Dear Parties,

The Department of Water Resources has received and acknowledges the withdrawal of protests against the above referenced application. Withdrawals have been received from the following protestants:

- 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
- Henry's Fork Foundation
- Idaho Conservation League
- United States Department of the Interior, Bureau of Land Management
- Greater Yellowstone Coalition
- Idaho Department of Fish and Game

The application does not have any remaining protests; therefore, the department will take the steps necessary to bring the application to a final resolution.

Please contact this office if you have any questions regarding this procedure. Information about water rights and other matters administered by this agency is also available on the internet at [www.idwr.idaho.gov](http://www.idwr.idaho.gov).

Sincerely,

James Cefalo  
Regional Manager

CC:

RIGBY ANDRUS & RIGBY  
PO BOX 250  
REXBURG, ID 83440-0250



STATE OF IDAHO  
DEPARTMENT OF FISH & GAME  
4279 COMMERCE CIRCLE  
IDAHO FALLS, ID 83401

IDAHO CONSERVATION LEAGUE  
ATTN: MARIE KELLNER  
ADVOCATES FOR THE WEST  
PO BOX 1612  
BOISE, ID 93701

GREATER YELLOWSTONE COALITION  
ATTN: CHARLES DRIMAL  
162 NORTH WOODRUFF  
IDAHO FALLS, ID 83401

HENRYS FORK FOUNDATION  
PO BOX 550  
ASHTON, ID 83420

A & B IRRIGATION DISTRICT  
BURLEY IRRIGATION DISTRICT  
MILNER IRRIGATION DISTRICT  
NORTH SIDE CANAL CO  
TWIN FALLS CANAL CO  
BARKER ROSHOLT & SIMPSON  
PO BOX 63  
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MINIDOKA IRRIGATION DISTRICT  
AMERICAN FALLS RESERVOIR DISTRICT #2  
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