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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**”), the **Idaho Department of Fish and Game** (hereinafter, “**IDFG**”), and the **United States Department of Interior, Bureau of Reclamation** (hereinafter, “**BOR**”). **FMID, HFF, ICL, BLM, GYC, IDFG, BOR** 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 _____, 20__, 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, BOR** and the **SWC**.

- 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.
 - 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

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

By: _____

United States Department of Interior
Bureau of Reclamation

By: _____

By: _____

United States Department of the Interior
Bureau of Land Management

By: _____

Greater Yellowstone Coalition


By: Caroline Byrd - Executive Director

Idaho Department of Fish and Game

By: _____

United States Department of Interior
Bureau of Reclamation

By: _____

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