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DEPT OF WATER RESOURCES
SOUTHERN REGION

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS
FOR PERMIT NOS. 36-17132 and 36-17133,

**STIPULATION FOR WITHDRAWAL
OF PROTESTS**

In the name of Donald and Bonnie Pica Trust.

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS (this "Stipulation") is made and entered into as of the 12th day of June, 2019, by and between the Applicant **Donald and Bonnie Pica Trust** (hereinafter, "Applicant") and the Protestant **Hagerman Wings Farm LLC** ("Protestant"). The Applicant and Protestant may hereinafter be collectively referred to as the "Parties."

RECITALS:

- A. Applicant filed Application for Permit Nos. 36-17132 and 36-17133 (hereinafter collectively, the "Applications", and individually simply "17132" and "17133") on June 29, 2018.
- B. The Protestant protested the Applications for various reasons.
- C. An initial pre-hearing conference was held in this matter on February 8, 2019.
- D. Instead of participating in administrative hearings contesting the Applications as provided for under Idaho law, the Parties have elected to enter this Stipulation to resolve the protests that have been filed.

AGREEMENTS:

1. **Application for Permit 36-17132 (wildlife pond south of Unnamed Stream).**
 - a. **Berm.** Applicant will relocate the existing berm between the pond and the unnamed stream so as to allow the two northern springs to flow into the unnamed stream.
 - b. **Concrete Structure / Pipe.** Applicant agrees to cap the existing concrete structure/pipe that is located in the pond in order to prevent diversion of water in the pond into the pipe.
 - c. **Weir / Headgate.** Applicant agrees to replace the existing weir/headgate structure in the pond with a one way ten inch (10") pipe and flapper valve so that the invert elevation of the pipe is set to the same invert elevation as the headgate concrete. The elevation of the concrete in the headgate is approximately the historic water elevation in the pond.
2. **Application for Permit 36-17133 (instream ponds on Unnamed Stream).**
 - a. **Source.** Applicant agrees to change the source of water from "groundwater" to "unnamed stream."
 - b. **Upper and Lower Ponds.** Applicant agrees to only use one pond per year as designated by Applicant. Applicant will limit the pond size to the permitted volume and both pond areas will be sealed to prevent seepage. If and when the upper pond is used Applicant agrees to line or seal it to ensure no seepage or sink holes. Applicant will be required to document that the ponds are sealed or lined and show there are no sink holes as part of the final license exam.
 - c. **Period of Use.** Applicant agrees to change the period of use from year-round to "October 31 through February 1".
 - d. **Rock pile.** Applicant agrees to remove the existing rock pile in the unnamed stream located downstream of the existing instream fish propagation water right.
3. **Resolution of Protests.** This Stipulation is intended to resolve the protests filed by the Protestant. Resolution of these protests is conditioned upon the approval, by the Department, of the conditions set forth herein in substantially the same form as described above. If such conditions are not approved as set forth herein, then any party may terminate this Stipulation by written notice to the other parties within thirty (30) days after the later to occur of the final orders approving 17132 and 17133. The Parties reserve the right to challenge any decision from the Department that does not include the conditions set forth in this Stipulation. If the conditions are included as set forth herein, then the protests of the Protestant shall be deemed withdrawn.

4. **Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves the Protestants' protests to 17132 and 17133. 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.
5. **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 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.
6. **Successors and Assigns.** This Stipulation shall be binding upon and shall inure to the benefit of each Party's officers, directors, shareholders, heirs, successors and assigns, and shall be specifically enforceable.
7. **Waiver and Modification.** No provision of this Stipulation may be waived, modified, or amended except by written agreement executed by all the Parties hereto.
8. **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.
9. **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.

DONALD AND BONNIE PICA TRUST



By: Travis L. Thompson

Attorneys for Applicant Donald and Bonnie Pica Trust

HAGERMAN WINGS FARM LLC

A handwritten signature in blue ink, appearing to read "G. Stette", is written over a horizontal line.

By: Gary D. Stette

Attorneys for Hagerman Wings Farm LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 2th day of June, 2019, I served a copy of the foregoing
STIPULATION FOR WITHDRAWAL OF PROTESTS by hand-delivery to the following:

Idaho Department of Water Resources
Southern Region
650 Addison Ave W, Ste 500
Twin Falls, Idaho 83301-5858

And by Email to:

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