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Department of Water Resources
Eastern Region

Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS
FOR TRANSFER NOS. 81292 and 81293,

In the name of Kip Hunter and Brandi
Hunter.

**STIPULATION FOR WITHDRAWAL
OF PROTESTS**

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS (this "Stipulation") is made and entered into as of the 24th day of May, 2018, by and between **Kip Hunter and Brandi Hunter** (hereinafter, "Hunter"); **Lance and Lisa Funk** (hereinafter, collectively "Funk"); **American Falls Reservoir District #2, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company** (hereinafter, collectively the "Coalition"); and **Idaho Ground Water Appropriators, Inc. ("IGWA")**. The Coalition and IGWA may hereinafter be referred to as the "Protestants". Hunter, the Coalition, and IGWA may hereinafter be collectively referred to as the "Parties."

RECITALS:

- A. Hunter filed Application for Transfer Nos. 81292 and 81293 (hereinafter collectively, the "Transfers", and individually simply "81292" and "81293") on September 26, 2016.
- B. The Transfers proposed certain amendments to Water Right No. 35-2824 (hereinafter simply "35-2824") owned by Hunter to be moved to properties owned by Funk.
- C. A review of the water right backfile for 35-2824 demonstrates that there were 75 shares of ASCC stock associated with the property upon which 35-2824 was originally developed.
- D. The Coalition and IGWA protested the Transfers for various reasons.

- E. Instead of participating in administrative hearings contesting the Transfers as provided for under Idaho law, the Parties have elected to enter this Stipulation to resolve the protests that have been filed.

AGREEMENTS:

1. **81292 (Jahnke Property Transfer).** The Parties agree that IDWR should approve transfer 81292 for the acreage amount described in the 81292 filing (56.5 acres). Within thirty (30) days of issuance of the approval of 81292, Hunter and/or Funk shall thereafter submit another transfer (the "Future Transfer") to move 10.5 acres of 35-2824 (just approved under approved 81292) to the Lisa Funk property such that the entire 75-acre portion of 35-2824 described in paragraph 3.a. below shall be appurtenant to the Lisa Funk property. After transfer of said 10.5 acres, the entire 46-acre portion of 35-2824 described in paragraph 3.b below shall be appurtenant to the Jahnke property.
2. **81293 (Lisa Funk Property Transfer).** The Parties agree that IDWR should approve transfer 81293 for the acreage amount described in the 81293 filing (64.5 acres). As described above, Hunter and/or Funk shall thereafter submit another transfer to move 10.5 acres of 35-2824 (just approved under approved 81292) from the Jahnke property to the Lisa Funk property such that the entire 75-acre portion of 35-2824 described in paragraph 3.a. below shall be appurtenant to the Lisa Funk property. After transfer of said 10.5 acres, the entire 46-acre portion of 35-2824 described in paragraph 3.b below shall be appurtenant to the Jahnke property.
3. **Aberdeen-Springfield Canal Company ("ASCC") Shares.**
 - a. **75-Acre Portion of 35-2824.** Funk shall associate 75 shares of ASCC stock with the portion of 35-2824 appurtenant to the Lisa Funk Property. Funk shall undertake all necessary actions with the ASCC board of directors to ensure that 75 shares of ASCC stock are associated with the foregoing 75 acres of 35-2824 upon the records of ASCC.¹
 - b. **46-Acre Portion of 35-2824.** The remaining 46 acres of 35-2824 shall not be required to have ASCC stock associated with it. In the possible, but unlikely, event that the 46-acre portion of 35-2824 is proposed to be amended in the future, the Parties acknowledge and agree that the 46-acre portion of 35-2824 shall be designated as a primary ground water right.
 - c. **Condition.**
 - i. **75-Acre Portion of 35-2824.** For the 75-acre portion of 35-2824 moved to the Lisa Funk property under 81293 and the Future Transfer IDWR is

¹ ASCC has verbally indicated that this can be approved.

expected to assign different water right numbers to these water right portions upon approval of the transfers. As to both portions, the Parties agree that IDWR shall include a condition that states: "Use of this right is combined with water from Aberdeen Springfield Canal Co." There shall not be any other condition or explanatory remark included in the transfer approvals referencing ASCC, ASCC shares, or supplemental water use.

- ii. **46-Acre Portion of 35-2824.** For the 46-acre portion of 35-2824 moved to the Jahnke property under 81292, the Parties agree that IDWR may remove the explanatory remark currently contained on 35-2824 ("Use of this right is combined with water from Aberdeen Springfield Canal Co."). There shall not be any other condition or explanatory remark included in the transfer approvals referencing ASCC, ASCC shares, or supplemental water use.
4. **Prohibition on Transfer.** No owner of 35-2824 or the progeny thereof shall file a transfer application or take other action to disassociate the 75 ASCC shares from 35-2824 unless a statute is enacted, an administrative rule is adopted by the Idaho Department of Water Resources, or an Idaho Supreme Court decision is entered that expressly states that a ground water right that has as its source the Eastern Snake Plain Aquifer and that contains a combined use condition or explanatory remark similar to that provided in Section 3.c.i of this Stipulation can be unstacked or disassociated from the canal company shares to which it is associated and used as a primary ground water right elsewhere.
5. **Resolution of Protests.** This Stipulation is intended to resolve the protests filed by the Protestants. 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 81292 and 81293. 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 Protestants shall be deemed withdrawn.
6. **Future Transfer.** The Protestants hereby agree not to protest the Future Transfer.
7. **Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves the Protestants' protests to 81292 and 81293. 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 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.

9. **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.
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.

KIP HUNTER AND BRANDI HUNTER
LANCE FUNK AND LISA FUNK



By: Robert L. Harris, of the firm Holden, Kidwell,
Hahn, & Crapo, P.L.L.C.

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Funk and Lisa Funk*

IDAHO GROUND WATER APPROPRIATORS, INC.



By: T.J. Budge, of the firm, Racine, Olsen, Nye,
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*Attorneys for Idaho Ground Water Appropriators,
Inc.*

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



By: Travis L. 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



for

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

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