

Robert L. Harris (ISB #7018)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518
Email: rharris@holdenlegal.com

RECEIVED
MAR 06 2019
Department of Water Resources
Eastern Region

Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 82318 IN THE NAME OF
TELFORD LANDS LLC, MICHAEL AND
SHANNON TELFORD

**STIPULATION FOR WITHDRAWAL
OF PROTEST**

THIS STIPULATION FOR WITHDRAWAL OF PROTEST (this "Stipulation") is made and entered into as of the day 6th of March, 2019, by and between **Telford Lands LLC and Michael Telford and Shannon Telford** (hereinafter, collectively "Telford"); and **Darrell E. McDonald** ("McDonald"). Telford and McDonald may hereinafter be collectively referred to as the "Parties" or individually a "Party."

RECITALS:

- A. Telford filed Application for Transfer No. 82318 (hereinafter simply "82318") on April 24, 2018 with the Idaho Department of Water Resources ("IDWR" or "Department").
- B. The Transfer proposes to "stack" Telford's water rights and to allow for the construction of a new well located in the NESWSW, of Section 26, Township 4N., Range 26E., Boise Meridian (hereinafter the "Hansen Well").
- C. McDonald protested 82318.
- D. Instead of participating in administrative hearings contesting the Transfer as provided for under Idaho law, the Parties have elected to enter this Stipulation to resolve the protest that has been filed.

AGREEMENTS:

1. **Conditions To Be Included On The Water Right Transfer.** IDWR shall include the following conditions (excluding footnotes), or conditions substantially in the same form, in the final order approving 82318:

a. "The right holder shall construct the new well (the "Hansen Well") located in the NESWSW, Section 26, Township 4N., Range 26E., Boise Meridian, such that it shall either (1) be fully cased (no perforations in the casing) down to a depth of 100 feet below land surface and during the well construction have passed through a significant clay layer (one that is thicker than 10 feet as is described in the January 11, 2019 Memo from Dennis Owsley specific to Transfer No. 82318); or (2) be fully cased (no perforations in the casing) down to a depth of 170 feet below land surface if no significant clay layer is encountered during the well construction.¹ The Hansen Well must be sealed in accordance with IDAPA 37.03.09.025.07 down to the depth where perforations can begin. Specifically, the annular seal must be a minimum of 2 inches nominal in thickness for grout all around the casing (the grout will be tremied from the bottom up). If a dry bentonite seal is installed in lieu of a grout seal it must be installed to the casing depth (either down to 100 feet or 170 feet as described in this condition) in accordance with IDAPA 37.03.09.025.07 for dry bentonite, which requires that the nominal borehole diameter to be at least 4 inches larger than the nominal casing diameter. Dry granular bentonite may not be placed through water and therefore may not be placed below the water table. If bentonite chips are used, they may be placed below the water table, however, if the seal extends 50 feet or greater below the water table, the nominal borehole diameter must be at least 6 inches greater than the nominal casing diameter as per IDAPA 37.03.09.025.07.g."



b. "The Hansen Well shall not divert more than 10 cfs under rights 34-2459, 34-2460, 34-2461, 34-2462, and 34-10925."



c. "The diversion and use of water described in this Transfer may be subject to additional conditions and limitations agreed to by the protestants and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein."

2. **Water Right Limitation Conditions.** The Department shall include conditions describing limitations to the water rights subject to 82318 as described on the spreadsheet attached hereto as **Exhibit 1**. In addition, the Department shall include a condition providing that the Folkman Well, and the two Island Wells, in combination, shall not divert more than 17.34 cfs under rights 34-7037, 34-2401A, and 34-4015. Water Rights 34-2459, 34-2460,



¹ Depending upon which alternative situation applies, Telford shall thereafter be able to perforate the casing below either 100 feet (under subpart 1) or 170 feet (under subpart 2) and otherwise construct the Well as he determines in his discretion, subject to and conditioned upon Telford's compliance with the well sealing requirements of Paragraph 1.a of this Stipulation.

34-2461, 34-2462, and 34-10925, or any portions thereof, shall never be diverted from any of these three wells pursuant to a Water Supply Bank rental (currently authorized under IDAPA 37.02.03) unless written consent to such Water Supply Bank rental is provided by the owner and security interest holder (if any) of the Toone well located in the SESW, 5N., 26E., Section 34. Telford shall notify Darrell E. McDonald in writing upon filing any application with the Department which requests permission to divert more than 17.34 cfs in total from the Folkman Well and the two Island Wells, including, but not limited to applications to rent water from the Water Supply Bank.

3. **Installation of PivoTrac Monitor.** Telford shall install PivoTrac monitors on each of the Island Wells (located in NESENW, 4N., 26E., Section 3, and SENWSW, 5N., 26E., Section 34) on or before October 31, 2019. Telford shall provide information collected from the PivoTrac monitors upon reasonable request of the Water District No. 34 watermaster.
4. **Ownership of Folkman Well.** The determination of what to do with the Folkman Well located in the NWNENW, 5N, 26E, Sec. 15, will depend on what the Hansen Well produces after its construction as follows:
 - a. If the Hansen Well produces less than 9 cfs as determined under a standard pump test once the Hansen Well is fully completed and equipped, then Telford shall retain ownership and the ability to use the Folkman Well.
 - b. If the Hansen Well produces 9 cfs or more as determined under a standard pump test once the Hansen Well is fully completed and equipped, then Telford shall convey with sufficient legal instrument(s) the Folkman Well to the Big Lost River Ground Water District to be used by said ground water district for mitigation in conjunctive management proceedings. Provided, however, that in making such conveyance, Telford may include as a condition of conveyance a right to use the Folkman Well in an emergency where one of Telford's other wells described in 82318 is completely non-functioning and the inability to use the non-functioning well will place Telford's crops in jeopardy. Such emergency use shall be subject to the limitations of paragraph 2, above.
5. **Resolution of Protests.** This Stipulation is intended to resolve the protest filed by McDonald. Resolution of this protest is conditioned upon the Department including the conditions set forth herein. If such conditions are not included, then any Party may terminate this Stipulation by written notice to the other Party within thirty (30) days after the final order approving 82318. The Parties reserve the right to challenge any decision from the Department that does not include the conditions set forth in this Stipulation.
6. **Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves McDonald's protest to 82318. 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 7 below.
7. **Reliance Upon Statements/Integration and Merger.** The Parties specifically acknowledge that 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 person 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.

8. **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.
9. **Waiver and Modification.** No provision of this Stipulation may be waived, modified, or amended except by written agreement executed by all the Parties hereto.
10. **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.
11. **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.
12. **Memorandum of Stipulation.** The parties agree to execute and record in the records of Butte County, Idaho a *Memorandum of Stipulation* in the form attached hereto as **Exhibit 2**.

TELFORD LANDS LLC


By: Michael Telford, Its *managing member*


Michael Telford


Shannon Telford

Darrell E. McDonald

or representations written or oral, as to any statement of law or fact made by any other person 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.

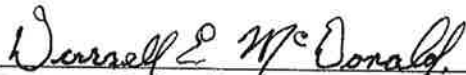
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TELFORD LANDS LLC

By: Michael Telford, Its _____

Michael Telford

Shannon Telford



Darrell E. McDonald

TELFORD EAST SIDE FARM WATER RIGHTS AFTER TRANSFER

Water Right No.	Name on Water Right	Basis	Priority Date	Source	Beneficial Use	Individual Diversion Rate Limitation (cfs)	Combined Diversion Rate Limitation (cfs)	Individual Volume Limitation (AF/A)	Combined Volume Limitation (AF/A)	Individual Acre Limitation	Total Permissible Place of Use	Point of Diversion	Notes
34-7138	Telford Lands LLC	Partial Decree	May 5, 1976	Big Lost River	Irrigation	16	12.5	1664	8441		2223.8	NWNWNW, 4N, 26E, Sec. 26 (Munsey Canal Heading)	Rights 34-2459, 34-2480, 34-2461, 34-2462 and 34-10925 when combined shall not exceed a total diversion rate of 12.5 cfs.
34-2459			April 19, 1965	Ground water		4.17		None		238			
34-2460			April 19, 1966			4.17		None		238			
34-10925			May 1, 1982			7.6		None		536 (enlargement)			
34-2461			May 3, 1965	Ground Water		2.08		None		119			
34-2462			May 3, 1966	Ground Water		2.08		None		119			
34-7037	Michael Telford Shannon Telford	Partial Decree	May 4, 1973	Ground water	Irrigation	12	12			1664	2223.8	NWNENW, 5N, 26E, Sec. 15 (Folkman Well) NESESW, 4N, 26E, Sec. 3 (Island Well) SESESW, 5N, 26E, Sec. 34 (Island Well) Point of Injection for Water Diverted From Above Wells (Eastside Canal Heading): NWNWNW, 4N, 26E, Sec. 26 Point of Rediversion for Water Diverted from Above Wells (Munsey Canal Heading): NWNWNW, 4N, 26E, Sec. 26 NESWSW, 4N, 26E, Sec. 26 (Hansen Well) SWSESW, 3N, 26E, Sec. 2 (North Airport Well) SESESW, 3N, 26E, Sec. 2 (South Airport Well) SWNWSW, 3N, 36E, Sec. 2 (Pivot 14 Well) NENESE, 3N, 26E, Sec. 3 (Small 14 Well) SWSESW, 3N, 26E, Sec. 1 (Big Hole) NWNWNW, 3N, 26E, Sec. 12 (Mark's Well)	Rights 34-7037, 34-2401A, and 34-4015 shall be limited to the diversion of no more than 17.34 cfs from the wells located in the NWNENW, 5N, 26E, Sec. 15, NESESW, 4N, 26E, Sec. 3, and SESESW, 5N, 26E, Sec. 34.
34-2401A			Sept. 1, 1961	3.7		1.64			188				
34-4015			Sept. 1, 1961	Ground water					89				
TOTAL GROUND WATER DIVERSION RATE						29.84			9411		2223.8		

EXHIBIT 2

**RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:
SPECK & AANESTAD
A Professional Association
P.O. Box 987
Ketchum, Idaho 83340-0987**

(space above line for Recorder's use)

MEMORANDUM OF STIPULATION

THIS MEMORANDUM OF STIPULATION (this "Memorandum") is made and entered into as of the __ day of February, 2019, by and between **Telford Lands LLC and Michael Telford and Shannon Telford** (hereinafter, collectively "Telford"); and **Darrell E. McDonald** ("McDonald").

1. Telford and McDonald entered into that certain Stipulation to Withdraw Protest, of even date herewith (the "**Stipulation**"), concerning certain real property located in Butte County, Idaho, as more particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Property**"). The Agreement sets forth, among other things, certain rights and obligations of the parties regarding water rights for irrigation of the Property.

2. The terms, conditions and provisions of the Agreement are incorporated herein and made a part hereof by this reference, and extend to and are binding upon the heirs, executors, administrators, grantees, successors and assigns of Grantor and the Grantee.

3. The above is only a summary of the Agreement. In the event of any conflict between the Agreement and this Memorandum, the Agreement shall control.

4. This Memorandum of Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument, and shall be effective upon execution of one or more of such counterparts by each of the parties hereto.

EXECUTED as of the Effective Date set forth above.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

EXHIBIT A
(the "Property")

COPY

WARRANTY DEED

NO. 0048455
RECORDED

MAR 02 2011

Order No. 4957LRT

For Valuable Consideration Received:

ISOM ACRES LIMITED PARTNERSHIP

the Grantor, does hereby grant, bargain, sell, convey and warrant unto

TELFORD LANDS, LLC

the Grantee, whose current address is:

1450 W. Highway 24, Paul, ID 83347

the following described premises, to-wit:

PARCEL 1:

Township 3 North, Range 26 East of the Boise Meridian, Butte County, Idaho.

Section 14: W1/2

Section 15: ALL

Section 16: E1/2

Section 22: N1/2

Section 23: NW1/4, E1/2SW1/4, SE1/4

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that he is the owner in fee simple of said premises; that said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Isom Acres Limited Partnership

Charles Isom
By Charles Isom

1-3-11
Date

STATE OF IDAHO)

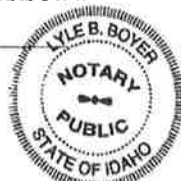
)ss.

COUNTY OF BUTTE)

On this 1st day of March, 2011, before me, the undersigned, a Notary Public, in and for said State, personally appeared CHARLES ISOM, known to me, and/or identified to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument as a Managing Member of ISOM ACRES LIMITED PARTNERSHIP, and acknowledged to me that he executed the same in said Limited Partnership's name.

WITNESS MY HAND AND OFFICIAL SEAL

Lyle B. Boyer
Commission Expires: 06/05/2015
Residing at: Arco, Idaho



TRACT 1:

Township 3 North, Range 26 East of the Boise Meridian, Butte County, Idaho.

Section 9: All of the S1/2 lying South of U.S. Highway 93.

Section 10: All the SW1/4; and the W1/2SE1/4 lying South of U.S. Highway 93,
EXCEPT: A portion of the SW1/4SE1/4 and a portion of the SE1/4SE1/4 of said Section, more particularly described as follows:

Commencing at the S1/4 Corner of said Section 10; thence N. 89°54'00" E., 597 feet, along the Southern boundary of said Section 10, to the Point of Beginning;
thence N. 0°05'23" W., 208 feet;
thence N. 89°54'00" E., 835 feet to the center line of a county road;
thence S. 1°58'10" E., 208 feet, along the center line of a county road to the Southern boundary of said Section 10;
thence S. 89°54'00" W., 841.79 feet to the Point of Beginning.

ALSO EXCEPT: A parcel of land being a portion of the NW1/4SE1/4 and the NE1/4SW1/4 of Section 10, Township 3 North, Range 26 EBM, described as follows, to-wit:

Beginning at the Northeast corner of the NW1/4SE1/4 of Section 10, Township 3 North, Range 26 EBM, monumented with a 5/8 inch iron pin;
thence S. 0°00'01" E., along the Easterly boundary of said NW1/4SE1/4, a distance of 654.20 feet to a point;
thence leaving said Easterly boundary S. 70°16'24" W., a distance of 1,965.86 feet to a point on the Southerly boundary of said NE1/4SW1/4;
thence S. 89°53'33" W., along said Southerly boundary, a distance of 426.45 feet to a point;
thence leaving said Southerly boundary N. 19°43'36" W., a distance of 825.97 feet to a point on the Southerly right-of-way of State Highway 93;
thence N. 70°18'44" E., along said Southerly right-of-way, a distance of 1,804.12 feet to a point on the Northerly boundary of said NW1/4SE1/4;
thence leaving said Southerly right-of-way N. 89°57'57" E., along said Northerly boundary, a distance of 1,045.38 feet to the Point of Beginning.

EXCEPTING THEREFROM: A parcel of land in the NW1/4SE1/4 of Section 10, Township 3 North, Range 26 East of the Boise Meridian, Butte County, Idaho, described as follows:

Beginning at a point in the Southerly boundary line of the Arco/Butte County Airport, said point being located the following courses from the Center 1/4 Corner of said Section 10:
A) S. 00°01'41" E., 1,125.96 feet, along the center line of said Section 10, to the point of intersection of same with the Southerly boundary line of the Arco/Butte County Airport;
thence B) N. 70°16'24" E., 921.10 feet, along said Southerly boundary line to the Point of Beginning;
thence 1) N. 70°16'24" E., 466.42 feet, along said boundary line;
thence 2) S. 00°00'01" E., 609.78 feet;
thence 3) S. 89°33'48" W., 439.06 feet;
thence 4) N. 00°00'01" W., 455.70 feet to the Point of Beginning.

TRACT 2:

Township 5 North, Range 26 East of the Boise Meridian, Butte County, Idaho.

Section 15: A parcel of land in the NE1/4NW1/4 of Section 15, more particularly described as follows:

Beginning at the center of an existing well located near the Northwest corner of said NE1/4NW1/4,
thence North approximately 80 feet to a point on the North line of Section 15 above, which is the True Point of Beginning;
thence West 8 feet;
thence South 90 feet;
thence East 23 feet;
thence North 90 feet to a point on the North Section line;
thence West 15 feet to the True Point of Beginning.

TRACT 3:

Township 3 North, Range 26 East of the Boise Meridian, Butte County, Idaho.

Section 10: A portion of the SE1/4SE1/4 of Section 10, more particularly described as follows:

Commencing at the Southeast corner of said Section 10, thence S. 89°54'00" W., 1,320.00 feet, along the Southern boundary of said Section 10;
thence N. 0°05'23" W., 208 feet to the Point of Beginning;
thence N. 0°05'23" W., 1,107.87 feet, along the Western boundary of the SE1/4SE1/4, said Section 10, to the Northwest corner of the SE1/4SE1/4, said Section 10;
thence N. 89°56'07" E., 75.61 feet to the center line of a county road;
thence S. 1°58'10" E., 1,108.52 feet, along the center line of a county road;
thence S. 89°54'00" W., 112 feet to the Point of Beginning.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of ^{March}~~February~~, 2019, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed below by the method(s) indicated.

DOCUMENT SERVED: STIPULATION FOR WITHDRAWAL OF PROTEST

ATTORNEYS AND/OR INDIVIDUALS SERVED:

James Cefalo, Hearing Officer
Idaho Department of Water Resources
900 North Skyline Dr., Suite A
Idaho Falls, ID 83402
208-525-7177 (fax)
James.Cefalo@idwr.idaho.gov

☒ Mail
☐ Hand Delivery
☒ Email

Darrell McDonald
P O Box 102
Arco, ID 83213

☒ Mail
☐ Hand Delivery

James P. Speck
SPECK & AANSTAD
A Professional Corporation
P O Box 987
Ketchum, ID 83340
208-726-0752 (fax)
jim@speckandaanestad.com

☒ Mail
☐ Hand Delivery
☐ Facsimile
☒ Email

Young H. Walker
2338 N 2930 W
Arco, ID 83213
why@atcnet.net

☒ Mail
☐ Hand Delivery
☐ Facsimile
☒ Email

Joel Andersen
2781 N 3375 W
Moore, ID 83255
andersenangus@gmail.com

☒ Mail
☐ Hand Delivery
☐ Facsimile
☒ Email



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.