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Department of Water Resources
Eastern Region

Instrument # 252389

TETON COUNTY, IDAHO
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Recorded for : RIGBY ANDRUS & RIGBY LAW
MARY LOU HANSEN Fee: 19.00
Ex-Officio Recorder Deputy 
Index to: MEMORANDUM

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between FREMONT-MADISON IRRIGATION DISTRICT, an Idaho Irrigation District of P.O. Box 15, St. Anthony, ID 83445 (hereinafter "FMID") and K L B, Inc., an Idaho corporation with a mailing address of P.O. Box 579, Rexburg, ID 83440 (hereinafter "KLB"), to-wit:

Recitals:

Whereas, KLB made an application for a new high water right as more fully described in that certain application No. 22-14308 for the diversion of 12.4 c.f.s. of water from the Teton River with a priority date of _____ (hereinafter "Application"), and

Whereas, FMID filed a protest against the Application based upon FMID's position that except for extremely wet years, KLB's diversion of said water right will retard the fill in storage to the American Falls Reservoir and thereby reduce the possibility that the overall storage in Water District 01 and especially the storage in Island Park Reservoir, Henrys Lake and Grassy Reservoir will fill, thus injuring FMID's valid and decreed storage water rights in said reservoirs; and

Whereas, the parties desire to settle FMID's protest in a manner which grants FMID the ability to determine when there is sufficient snowpack or rains to reasonably insure that the 01 Storage system will fill and thus allow KLB the right to divert it's water right in priority; and

Whereas, it is understood that IDWR will not add the terms of this Stipulation to the license to be granted to KLB except perhaps to refer to this Stipulation if it is recorded in Teton County, where the diversion is to take place;

Now Therefore, it is agreed by and between the Parties as follows:

KLB shall modify its Application to comply with the terms required of all other Protestants.

1. KLB agrees that it will require the License to refer to this Stipulation, which shall be recorded in the official records of Teton County, Idaho and that its terms and conditions shall apply to the use and diversion of any permit or eventual license resulting from the Application.
2. KLB shall only divert water from the resulting permit or license resulting from the Application if and when FMID grants permission for such diversion in writing to KLB, and shall cease diverting upon notification from FMID that the diversions may be impacting FMID's valid water rights.

3. FMID shall use all of its available resources, including snowpack and forecasts, to determine in good faith when KLB is allowed to divert under the resulting permit or license from the Application.
4. Upon all other Protestant's withdrawal of their protests/objections to KLB's Application, and the recording of this Stipulation which shall be conditioned in any permit and license based upon the Application, FMID shall withdraw its protest/objection.
5. Should KLB thereafter divert without telephonic followed by immediate written authority (including email) from FMID, KLB shall be in default of this Stipulation and FMID shall have the right to cause KLB's diversion to be curtailed immediately, by whatever legal means possible, including, but not limited to locking KLB's pump(s) either by IDWR or by FMID's water master.
6. Each party to this Agreement hereby agrees to indemnify, protect, hold harmless, defend and pay on behalf of the other party (including its managers, directors, employees, servants and agents) any and all liability, penalties, costs, losses, damage, expenses, causes of action, claims or judgments, including all reasonable attorneys fees, expert witness fees or costs, concerning any injury sustained by any person, including a party's employees, or damage to property of any kind, which injury or damage in any way whatsoever, arises out of or is in any way connected with the performance of the obligations and work by a party under this Agreement. Each party's indemnification shall apply to any fault, acts or omissions, willful misconduct or negligent conduct, whether passive or active, on the part of said party, or its agents or employees.
7. If either party defaults in performance of any of the terms of this Agreement, then the non-defaulting party, without in any manner limiting its legal and equitable remedies, may provide the defaulting party a telephonic followed by immediate written notice (including email) requiring it to cause such default to be corrected immediately. Unless within 5 days after such notice to the defaulting party, such default shall be corrected or arrangements for the correction shall be made, the non-defaulting party may immediately exercise its rights against the defaulting party, including but not limited to injunctive relief, and the defaulting party shall be liable to the non-defaulting party for any related costs or expenses. The non-defaulting party may exercise any rights, claims, or demands which the defaulting party may have against third persons in connection with its default and the defaulting party does hereby assign, transfer, and set over unto the non-defaulting party all such rights, claims, and demands it may have to assist the non-defaulting party to cure a default by the defaulting party.
8. Neither party may assign its rights or obligations within this Agreement to a third

party without the express written consent of the other party.

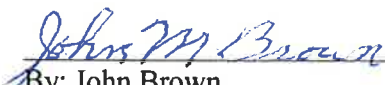
9. This Agreement shall inure to and be binding upon the parties hereto and their successors and assignees, including the successors and assigns of the lands upon which WR# 22-14308 is authorized as its place of use. The Parties represent that each has the right, power and authority to enter into this Agreement without further contingent requirements than those set forth hereinabove.
10. This Agreement and related documents specifically contemplated by this Agreement constitute and contain the entire agreement of the parties and supersedes and merge all other prior understandings and/or agreements between the parties, if any, whether verbal or written.
11. This Agreement shall be governed by and interpreted under the laws of the State of Idaho.

Dated this 29th day of October, 2018.

“FMID”


By: Jeff Raybould
Its: Chairman

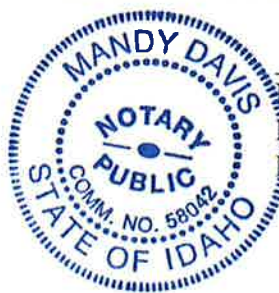
“KLB”

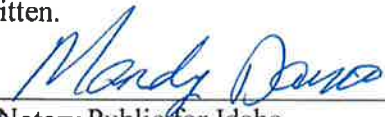

By: John Brown
Its: Vice President

STATE OF IDAHO)
)ss.
County of Madison)

On this 29th day of October, 2018 before me a notary public in and for said State, personally appeared Jeff Raybould known to be the Chairman of the irrigation district that executed the instrument or the person who executed this instrument on behalf of said irrigation district and acknowledged to me that such irrigation district executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

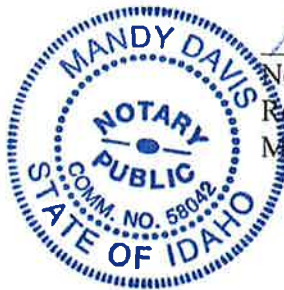



Notary Public for Idaho
Residing at: ST. Anthony
My commission expires: 6/24/25

STATE OF IDAHO)
 ss.
County of Madison)

On this 25th day of October, 2018 before me a notary public in and for said State, personally appeared John Brown known or identified to me to be the Vice-President of KLB, Inc., the corporation that executed the instrument or the person who executed this instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Mandy Davis
Notary Public for Idaho
Residing at ST Anthony
My commission expires: 6/24/23