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WATER RESOURCES  
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS  
FOR PERMIT NOS. 63-34333 AND 63-  
34334 IN THE NAME OF THORPE  
FAMILY TRUST

STIPULATION FOR  
WITHDRAWAL OF PROTESTS AND  
ISSUANCE OF PERMITS

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS AND ISSUANCE OF PERMITS (this "Stipulation") is made and entered into as of the latest date contained in the signature block below, by and between **THORPE FAMILY TRUST** (hereinafter, "Thorpe"), and the **Idaho Department of Fish and Game** ("IDF&G"). Thorpe and IDF&G may hereinafter collectively be referred to as the "Parties."

**RECITALS:**

A. Thorpe's Applications for Permit Nos. 63-34333 and 63-34334 (hereinafter, together "63-34333 and 63-34334") seek water rights from the Idaho Department of Water Resources ("IDWR") for 0.90 cfs and 13.05 cfs, respectively, each with a priority date of January 26, 2017 for wildlife, recreation and diversion to storage for such storage purposes in Canyon County, Idaho;

B. After 63-34333 and 63-34334 were advertised pursuant to Idaho law, the applications were protested on various grounds by the IDF&G;

C. The Parties desire to avoid administrative hearings concerning 63-34333 and 63-34334 and to resolve IDF&G's protest on terms and conditions acceptable to both Parties. Upon the terms of this Stipulation being met, as set forth in detail below, IDF&G will withdraw its protests to the issuance of permits for development of 63-34333 and 63-34334;

NOW THEREFORE, in consideration of the above recitals, which are incorporated herein by this reference, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**AGREEMENT:**

1. **Conditions To Be Included On Permits 63-34333 and 63-34334.** 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 orders issuing Permit Nos. 63-34333 and 63-34334:

- a. The IDWR Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
- b. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
- c. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.
- d. Wildlife and wildlife storage use is to create shallow water and moist soil wildlife habitats. These habitats are intended to provide resting, roosting, and refuge areas for waterfowl.
- e. Recreation and recreation storage use is for waterfowl hunting and wildlife viewing. Recreation use under this right is for flow-through water and return-flow water associated with recreation storage.
- f. This right does not authorize the diversion and use of water released from Lucky Peak Reservoir for stream flow maintenance purposes in connection with Water Right 63-3618.
- g. Water diverted under the wildlife and recreation flow components of this water right, minus evaporation and seepage losses, shall be returned to the Boise River.
- h. Water rights 63-34333 and 63-34334 in combination shall be limited to a diversion rate of 13.05 cfs.
- i. Diversions under water rights 63-34334 will not exceed 13.05 cfs in combination with diversion of irrigation water rights appurtenant to the 63-34334 place of use.

**2. Return Flow Analysis.** Thorpe agrees to conduct a return flow analysis during the first year of operation. The analysis shall consist of spot measurements of diversion rates at the points of diversion authorized under the water rights, and spot measurements of return rates to the river at various discharge points. It is anticipated that the work will require no more than 10 measurements per event with an event each in December and January. Measurements will be made with weirs or current meters where practical; some locations may require that flow be

estimated based on cross sectional area and velocity calculations. Measurements will be summarized in a brief report prepared by a professional engineer registered in the State of Idaho. The report will include a map showing measurement locations. The report will be delivered to IDF&G no later than March 1 of the first full season of operation.

**3. Issuance of Proposed Order and Subsequent Withdrawal of Protests.** The Parties shall instruct IDWR to issue a proposed order approving Applications for Permit Nos. 63-34333 and 63-34334 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 no objections are received within the fourteen (14) day time period, IDF&G's protests shall be deemed withdrawn, and IDWR shall thereafter issue a final order approving 63-34333 and 63-34334 consistent with this Stipulation. The Parties shall 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.

**4. Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves IDF&G's protests to 63-34333 and 63-34334, and that IDF&G reserves all rights to protest other applications for permits, transfers, and any other proceedings. 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 and agree that other than as is set forth herein, they have executed this Stipulation without relying upon any written or oral statements or representations 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 Stipulation represents the sole entire and integrated agreement 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 Parties' 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 parties hereto.

**8. Enforcement and Interpretation.** This Stipulation is a valid and binding obligation of the parties, and their successors and 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.

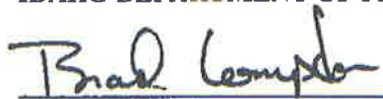
9. **Counterparts.** This Stipulation may be executed in counterparts, each of which is deemed an original but all of which constitutes one and the same instrument. The signature pages may be detached from each counterpart and combined into one instrument.

**THORPE FAMILY TRUST**

  
By: Ryan Thorpe, Owner of Trust

2/12/2018  
Date

**IDAHO DEPARTMENT OF FISH AND GAME**

  
By: Brad Compton, Southwest Regional Supervisor

2/16/18  
Date

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>TH</sup> day of ~~February~~ <sup>MARCH</sup>, 2018, the foregoing was filed, served, and copied as follows:

#### DOCUMENT FILED:

Idaho Department of Water Resources  
Western Region  
2735 Airport Way  
Boise, ID 83705

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|-------------------------------------|----------------|
| <input type="checkbox"/>            | U. S. Mail     |
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| <input type="checkbox"/>            | E-mail         |

#### SERVICE COPIES TO:

MCCONNEL ISLAND DITCH CO LTD  
ALBERT P BARKER  
BARKER ROSHOLT & SIMPSON LLP  
PO BOX 2139  
BOISE, ID 83701-2139

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TOM BASSISTA  
IDAHO DEPARTMENT OF FISH AND GAME  
3101 S POWERLINE RD  
NAMPA, ID 83686

|                                     |                |
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By: MICHAEL P. LAWRENCE