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Attorneys for Applicant Thorpe Family Trust

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JUN 26 2018
WATER RESOURCES
WESTERN REGION

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

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

**STIPULATION FOR WITHDRAWAL
OF PROTEST AND ISSUANCE OF
PERMITS**

WHEREAS, Thorpe Family Trust ("Thorpe") filed Application for Permit No. 63-34333 on January 26, 2017, to appropriate 0.90 cfs for wildlife and recreation and diversions to storage from September 1 through February 28, and 221.5 acre-feet annually for wildlife and recreation storage purposes from September 1 to February 28, with the source of water from the Boise River.

WHEREAS, Thorpe filed Application for Permit No. 63-34334 on January 26, 2017, which was amended on May 17, 2017, to appropriate 13.05 cfs for wildlife and recreation and diversions to storage from September 30 through February 28, and 1624.7 acre-feet annually for wildlife and recreation storage purposes from September 30 to February 28, with the source of water from the Boise River.

WHEREAS, on May 25, 2017, McConnel Island Ditch Co., Ltd., ("McConnel Island") filed a Notice of Protest to the approval of each Application.

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ORIGINAL

WHEREAS, protestant McConnell Island and Thorpe wish to resolve the issues raised in the Notices of Protest filed by McConnell Island.

NOW, THEREFORE, Thorpe and McConnell Island, by and through its attorneys of record, stipulate and agree that protestant McConnell Island will withdraw its Notices of Protest to the Applications on the following conditions:

1. That the Idaho Department of Water Resources ("IDWR" or "Department") 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 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

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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. 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 McConnel Island no later than March 1 of the first full season of operation.

3. Thorpe agrees that the period of use for water rights 63-34333 and 63-34334 shall begin on September 30 and end on February 28 of the following year.

4. The parties request the Department, pursuant to IDAPA 37.01.01.612, for orders approving the Applications and including conditions set forth in paragraph 1 above.

5. McConnel Island's protests to the Applications shall be deemed withdrawn upon the issuance of final orders approving the Applications and including the condition set forth in paragraph 1 above.

6. Each party shall bear its own costs, expenses, and attorney fees in connection with the above-captioned matter.

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DATED: June 26th 2018

THORPE FAMILY TRUST

By: 
Ryan Thorpe

DATED: June 25, 2018

BARKER, ROSHOLT & SIMPSON LLP

By: 
Albert P. Barker
Attorneys for McConnel Island Ditch Co., Ltd.

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CERTIFICATE OF SERVICE

I hereby certify that on the 26TH day of JUNE, 2018, a true and correct copy of the foregoing was filed and/or served upon the following individual(s) by the means indicated:

DOCUMENT FILED:

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

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U.S. Mail, postage prepaid
Express Mail
Hand Delivery
Facsimile

DOCUMENT SERVED:

SPF Water Engineering LLC
c/o Lori Graves
300 E. Mallard Dr., Ste 350
Boise, ID 83706

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U.S. Mail, postage prepaid
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Thorpe Family Trust
c/o Ryan Thorpe
28854 Boulder Rd.
Parma, ID 83660

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McConnel Island Ditch Co., Ltd.
Attn: Albert P. Barker
Barker Rosholt & Simpson LLP
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PO Box 2139
Boise, ID 83701

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Tom Bassista
Idaho Department of Fish and Game
3101 S Powerline Rd
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By: 

Michael P. Lawrence

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