

Robert L. Harris (ISB # 7018)
rharris@holdenlegal.com
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

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS
FOR TRANSFER NOS. 81333, 81337, AND
81338 IN THE NAME OF MPH FARMS

**STIPULATION FOR
SETTLEMENT OF PROTESTS**

THIS STIPULATION FOR SETTLEMENT OF PROTESTS (this "Stipulation") is made and entered into as of the 16th day of October, 2017, by and between **MPH Farms, LLC d/b/a MPH Farms** (hereinafter, "MPH"); **Burley 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". MPH, the Coalition, and IGWA may hereinafter be collectively referred to as the "Parties."

RECITALS:

- A. MPH filed Application for Transfer Nos. 81333, 81337, and 81338 (hereinafter collectively, the "Transfers", and individually simply "81333", "81337", and "81338") on November 21, 2016.
- B. The Transfers proposed certain amendments to water rights owned by MPH.
- C. The Coalition and IGWA protested the Transfers for various reasons.

- D. 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. **81333.** MPH will submit an amended transfer for 81333 to only propose the amendment of the place of use of Water Right No. 35-8932 to (1) shift 43.4 acres from the NE1/4 of Section 17, Township 6S., Range 29E., Boise Meridian, to the NE1/4SW1/4 and SE1/4SW1/4 of said Section 17; and to (2) shift 4.1 acres to the NW1/4SE1/4 and SW1/4SE1/4 of Section 15, Township 6S., Range 29E., Boise Meridian, all as depicted on the map attached hereto as **Exhibit 1.**¹ The Protestants agree not to protest the amended transfer application for 81333. In addition to other conditions that the Department deems appropriate, the Department shall include the following set of conditions, or conditions substantially in the same form, in the final order approving 81333 (as amended) and on Water Right No. 35-8932:
 - a. "Prior to the diversion and use of water under Transfer approval 81333 the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device."²
 - b. "As resources allow, the Department will conduct one or more in-person field examinations of the authorized place of use of this right during the 2018 and 2019 irrigation seasons and thereafter as the Department deems appropriate to verify that the pivot system is not irrigating outside of the authorized place of use of this right, particularly the rock patches that are not authorized to be irrigated."
 - c. "A representative of any of the original protestants to transfer no. 81333 may request of the right holder an in-person inspection of the pivot system used to irrigate the place of use of this right to verify that the pivot system is not irrigating outside of the authorized place of use of the right, particularly the rock patches that are not authorized to be irrigated. Upon receipt of such request, the right holder shall schedule the inspection to occur at a time when the pivot system will next operate in its normal irrigation rotation where the pivot system will be crossing one or more of the rock patches that are not authorized to be irrigated."
 - d. "Noncompliance with any condition of this right is cause for the director to issue a notice of violation, cancel or revoke the right, or, if the right is included in a water district, request that the watermaster curtail diversion and use of water."

¹ Movement of the 4.1 acres will align the authorized acres for this MPH farm with current irrigation practices on the property which consists of the use of wheel lines.

² This condition is patterned after a condition contained in a Transfer approval for another of MPH's water rights, Water Right No. 35-7857B, that resulted from approved Transfer 81085 issued on September 8, 2016.

2. **81337.** Through the execution of this Stipulation, MPH hereby withdraws 81337. In the event additional paperwork is necessary for the Department to withdraw 81337, MPH will execute and submit such paperwork.
3. **81338.** IDWR will limit approval of 81338 to only allow for the amendment of the place of use of Water Right Nos. 35-2306 and 35-8197 to move 168 acres to the NW1/4 of Section 8, Township 6S., Range 29E., Boise Meridian, and to the W1/2 of Section 9, Township 6S., Range 29E., Boise Meridian. The new place of use of the 168 acres is depicted in red on the map attached hereto as **Exhibit 2**. In addition to other conditions that the Department deems appropriate, the Department shall include the following set of conditions, or conditions substantially in the same form, in the final order approving 81338 and on the portions of Water Right Nos. 35-2306 and 35-8197 amended under 81338:
 - a. "This right is limited to two points of diversion, including one in the SESW of Section 9, Township 6 South, Range 29 East."³
 - b. "Upon completion of the second groundwater point of diversion authorized under Transfer 81338, the right holder shall notify the department of the well's location and request that the unused point of diversion be removed from the water right."⁴
 - c. "As resources allow, the Department will conduct one or more in-person field examinations of the authorized place of use of this right during the 2018 and 2019 irrigation seasons and thereafter as the Department deems appropriate to verify that the pivot system is not irrigating outside of the authorized place of use of this right, particularly the rock patches that are not authorized to be irrigated."
 - d. "A representative of any of the original protestants to transfer no. 81338 may request of the right holder an in-person inspection of the pivot system used to irrigate the place of use of this right to verify that the pivot system is not irrigating outside of the authorized place of use of the right, particularly the rock patches that are not authorized to be irrigated. Upon receipt of such request, the right holder shall schedule the inspection to occur at a time when the pivot system will next operate in its normal irrigation rotation where the pivot system will be crossing one or more of the rock patches that are not authorized to be irrigated."
 - e. "Prior to the diversion and use of water under Transfer approval 81338 the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion in accordance with Department specifications, or shall obtain

³ This condition is patterned after a condition contained in a Transfer approval for another of MPH's water rights, Water Right No. 35-7857B, that resulted from approved Transfer 81085 issued on September 8, 2016.

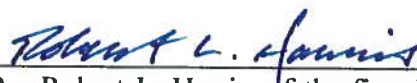
⁴ This condition is patterned after a condition contained in a Transfer approval for another of MPH's water rights, Water Right No. 35-7857B, that resulted from approved Transfer 81085 issued on September 8, 2016.

an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.”

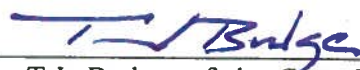
4. **Remaining Portions of Water Right Nos. 35-2306 and 35-8197.** The remaining eighty-acre portions of Water Right Nos. 35-2306 and 35-8197 not amended pursuant to 81338 will be appurtenant to the E1/2NW1/4 of Section 19, Township 6S., Range 31E., Boise Meridian. Nothing herein shall prevent MPH from seeking to amend these water right portions in the future pursuant to Idaho Code § 42-222 and/or other Idaho law, and nothing herein shall prevent IGWA and the Coalition from protesting any such proposed amendment (transfer) applications.
5. **Right to Inspect Place of Use of Water Right Nos. 35-7857B, 35-7920B, 35-8606, and 35-8626.** Water Right Nos. 35-7857B, 35-7920B, 35-8606, and 35-8626 were previously amended under Transfer No. 81085 (hereinafter simply “81035”) to allow for the irrigation of 543.5 acres within a 688.5-acre permissible place of use (“PPOU”). The illustrative map included in the approval for 81085 is attached hereto as **Exhibit 3**. Under 81035, MPH can amend the designated 543.5 acres from time to time by submitting an updated GIS shapefile to the Department. MPH will submit an amended shapefile identifying the 543.5 acres depicted in blue on **Exhibit 2** as the most recent depiction of the authorized place of use of the 543.5 acres. As part of the consideration for entering into this Stipulation, the Protestants and Department shall be entitled to the same inspection rights for the place of use of Water Right Nos. 35-7857B, 35-7920B, 35-8606, and 35-8626 as those associated with 81333 and 81338 described herein.
6. **Failure to Comply with Conditions Included in the Water Right Applications.** MPH acknowledges that the failure to comply with any of the conditions set forth herein may subject MPH to a formal notice of violation pursuant to Idaho Code §§ 42-351 and 42-607, as well as an administrative enforcement action pursuant to Idaho Code § 42-1701B, the result of which could be injunctive action, fines, and/or requirements to obtain water supplies to mitigate for the unmitigated water usage as restitution.
7. **Resolution of Protests.** This Stipulation is intended to resolve the protests filed by the Protestants. Resolution of these protests are conditioned upon the approval, by the Department, of the conditions set forth herein in substantially the same form as set forth herein. If the conditions are not included as set forth herein, then this Stipulation shall be void. 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.
8. **Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves the Protestants’ protests to 81333, 81337, and 81338. 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 12 below.

9. **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.
10. **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.
11. **Waiver and Modification.** No provision of this Stipulation may be waived, modified, or amended except by written agreement executed by all the Parties hereto.
12. **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.
13. **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.

MPH FARMS, LLC D/B/A MPH FARMS


By: Robert L. Harris, of the firm Holden, Kidwell,
Hahn, & Crapo, P.L.L.C.
Attorneys for MPH Farms, LLC d/b/a MPH Farms

IDAHO GROUND WATER APPROPRIATORS, INC.


By: T.J. Budge, of the firm, Racine, Olsen, Nye,
Budge & Bailey, Chtd.
*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

MINIDOKA IRRIGATION DISTRICT



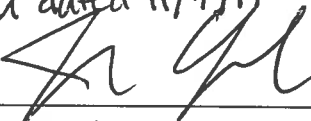
By: W. Kent Fletcher, of the firm Fletcher Law Office

Attorneys for Minidoka Irrigation District

Approved as to form and content by the Idaho Department of Water Resources.

→ with addendum dated 11/7/17

Dated: 11/7/17



By: Hearing Officer James Cefalo
Water Resource Program Manager, Eastern Region
Idaho Department of Water Resources

EXHIBIT 1

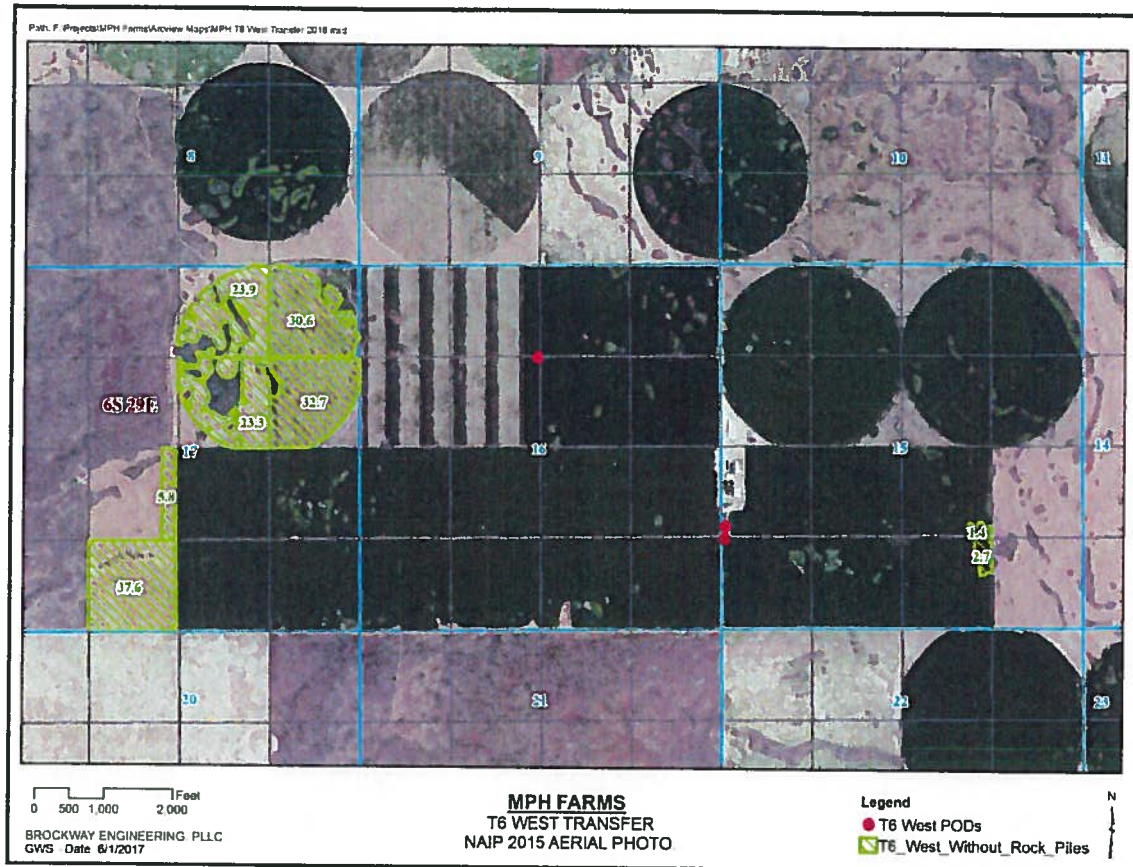


EXHIBIT 2

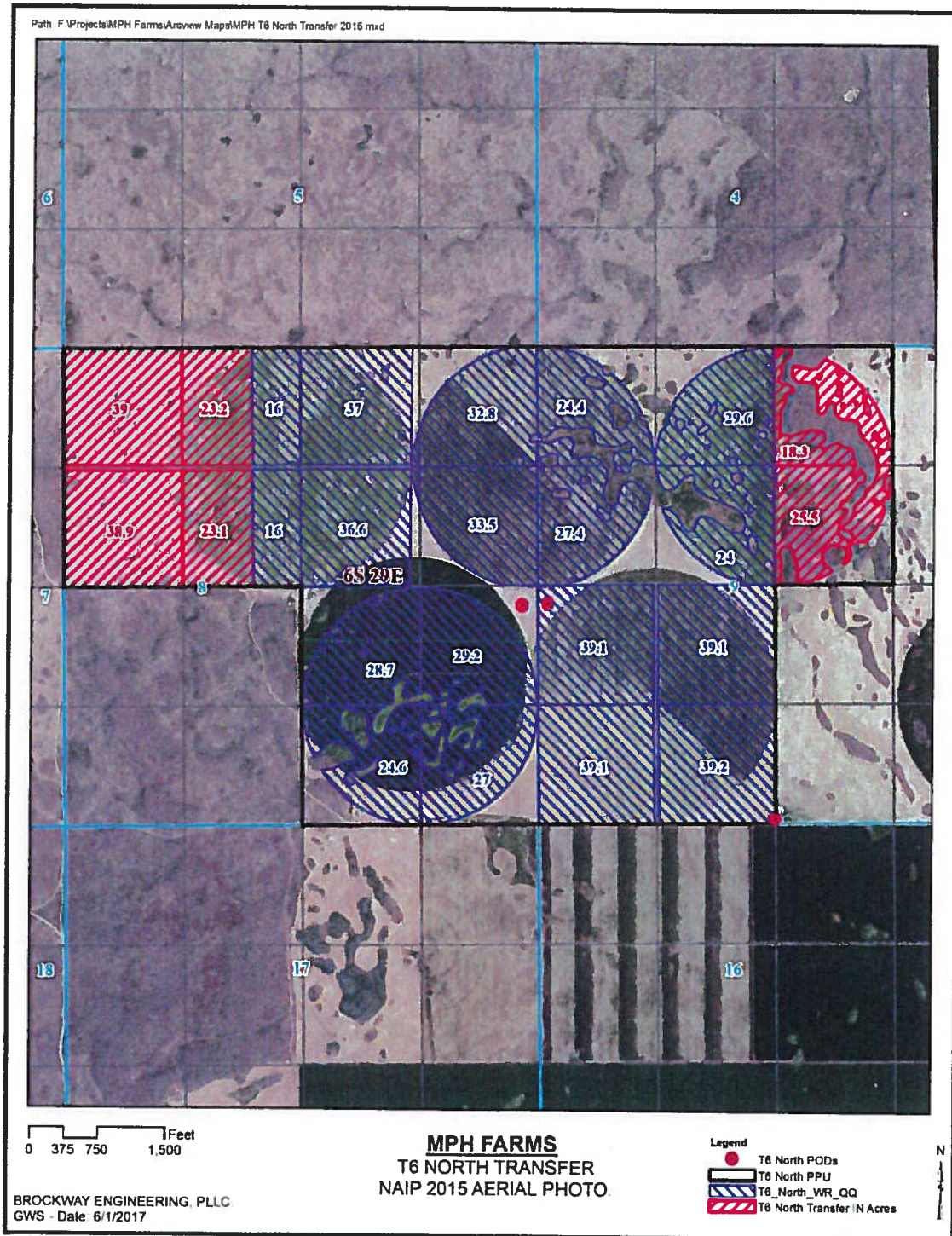
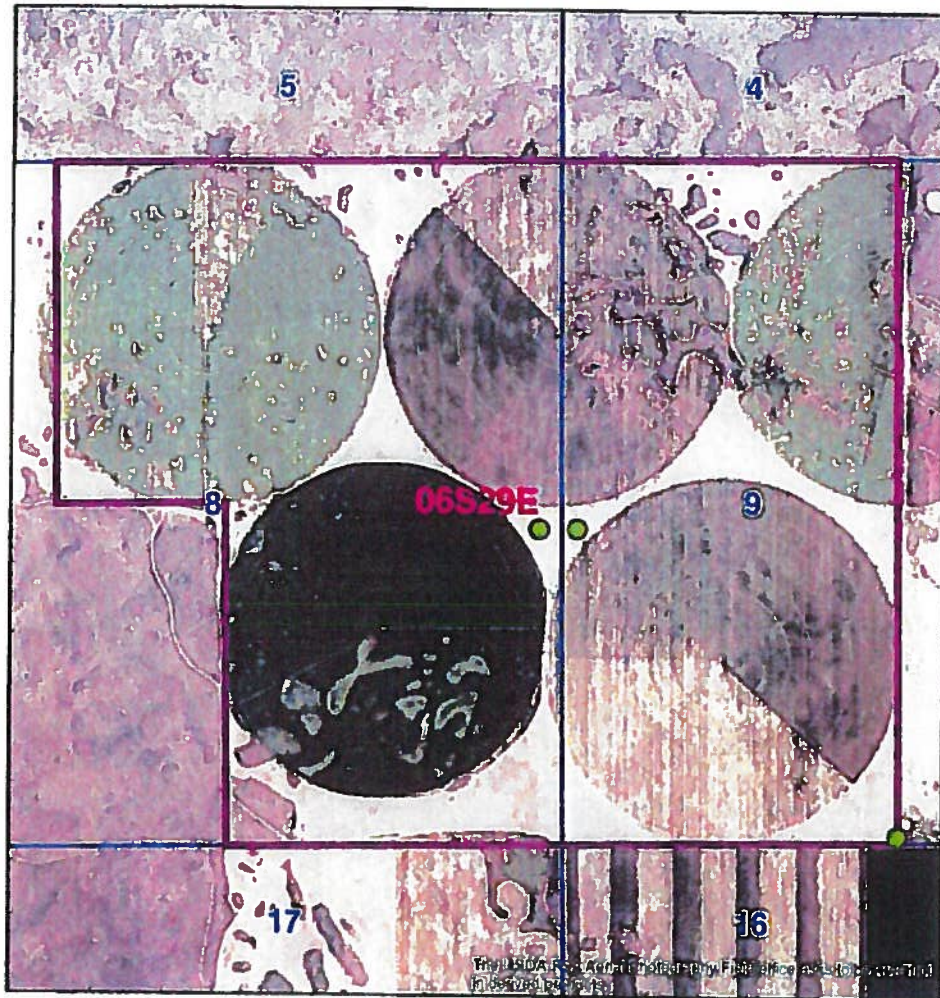


EXHIBIT 3

Transfer Approval 81085

This map depicts the IRRIGATION place of use boundary at the time of this transfer approval and is attached to the approval document solely for illustrative purposes.



Legend

- Water Right POD
- Water Right POU
- Township/Range
- Sections

0 495 990 1,980 Feet

1 Inch = 1,095 feet



Cefalo, James

From: Rob Harris <rharris@holdenlegal.com>
Sent: Monday, October 16, 2017 11:08 PM
To: Cefalo, James
Cc: T. J. Budge; Travis Thompson; Kent Fletcher (wkf@pmt.org)
Subject: Signed Stipulation for MPH Farms Transfer Nos. 81333, 81337, and 81338
Attachments: 201701017 Stipulation-signed.pdf

Hearing Officer Cefalo:

Enclosed for processing with IDWR is a fully-executed stipulation to resolve protests to three transfers filed by MPH Farms—Transfer Nos. 81333, 81337, and 81338.

Because the stipulation calls for IDWR to include certain conditions, to ensure the conditions are acceptable, I have included a signature line for you to approve the form and content of the stipulation. This is only to assure the parties to the stipulation that the conditions, as written, are acceptable to the Department. We recognize that the Department is not a party to this agreement and do not intend for IDWR to become a party by signing. If the conditions as written are acceptable, please include your signature on the stipulation, and email a copy to the parties. I recall that we discussed these provisions generally at a pre-hearing conference, and we do not think there are any conditions that should be of concern. However, if there are any conditions that are a concern, please let us know.

The stipulation calls for an amended transfer for 81333 that will need to be readvertised, which will be filed once you indicate that the conditions are acceptable.

The stipulation also calls for the withdrawal of 81337. We anticipate that the stipulation is sufficient to withdraw 81337. However, if another filing is necessary for withdrawing this transfer, please let me know. Consistent with past IDWR practice, we anticipate that a confirmation letter indicating 81337 has been withdrawn will be sent to the parties.

Finally, once we know that the conditions in the stipulation are acceptable, an amended transfer application for 81338 will be filed, but it will not need to be readvertised because the amended transfer will reduce the number of acres that are proposed to be moved in the transfer. However, the approved transfer must include the conditions set out in the stipulation.

Please let me know if you have any questions regarding the stipulation.

Thanks,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130
Phone: (208) 523-0620
Fax: (208) 523-9518
E-Mail: rharris@holdenlegal.com