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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

**ADDENDUM TO STIPULATION FOR
SETTLEMENT OF PROTESTS**

THIS ADDENDUM TO STIPULATION FOR SETTLEMENT OF PROTESTS (this "Addendum") is made and entered into as of the 7th day of November, 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.

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- D. Instead of participating in administrative hearings contesting the Transfers as provided for under Idaho law, the Parties elected to enter into a stipulation to resolve the protests that have been filed (the "Stipulation").
- E. A concern was raised by the Hearing Officer concerning two conditions in the Stipulation as to whether they should be included as conditions of the water rights amended by 81333 and 81338. In response, the Parties hereby agree to supplement the Stipulation with this Addendum.

AGREEMENTS:

- 1. **81333.** The Parties agree that condition c under paragraph 1 of the Stipulation for 81333 shall not be included as a condition on the water rights amended by 81333 or in the approval for 81333. However, by contract, MPH and its successors and assigns—as the right holder(s)—agree to be subject to condition c such that 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.
- 2. **81338.** The Parties agree that condition d under paragraph 3 of the Stipulation for 81338 shall not be included as a condition on the water rights amended by 81338 or in the approval for 81338. However, by contract, MPH and its successors and assigns—as the right holder(s)—agree to be subject to condition d such that 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.
- 3. **Revised Exhibit 1.** The Parties hereby agree to replace **Exhibit 1** of the Stipulation with a revised **Exhibit 1** attached hereto.
- 4. **Remaining Stipulation Provisions.** The provisions of this Addendum hereby amend the Stipulation and are incorporated therein. Other than the changes described in paragraphs 1 and 2 above, the remaining provisions of the Stipulation remain unchanged.

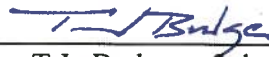
MPH FARMS, LLC D/B/A MPH FARMS



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

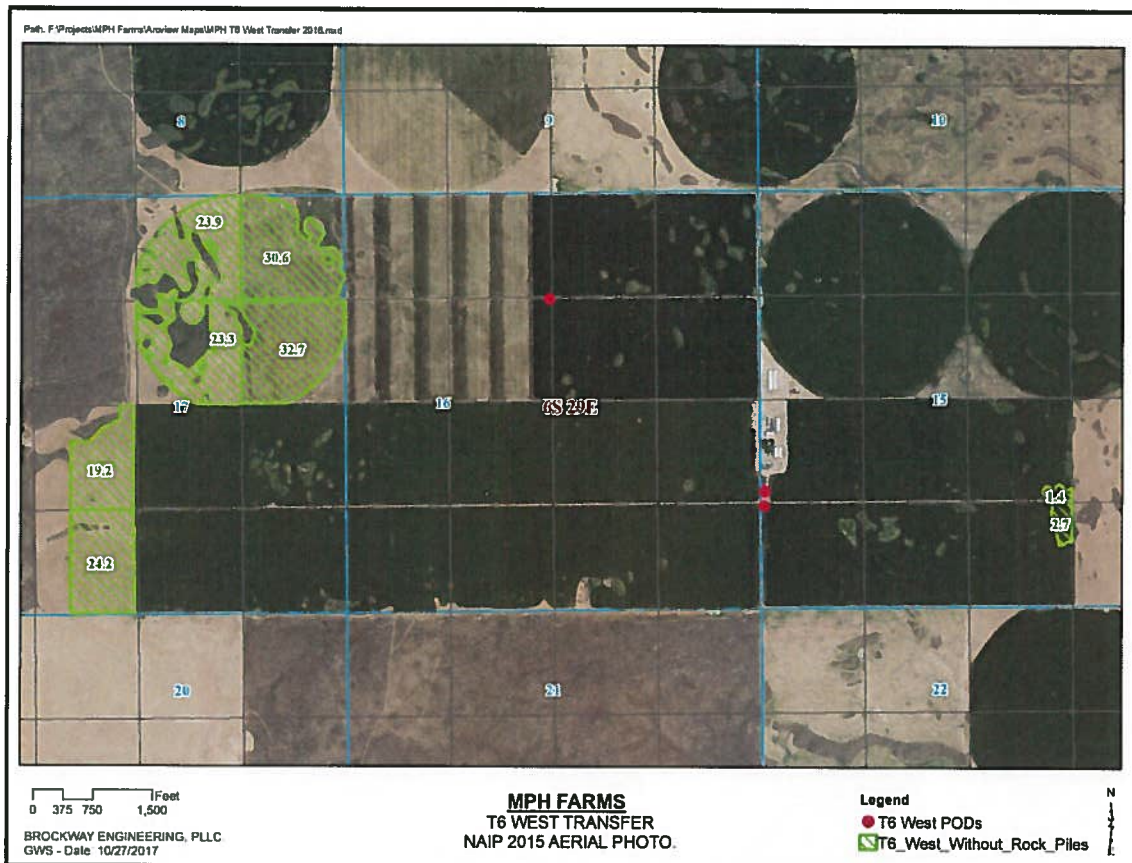
Attorneys for Minidoka Irrigation District

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

Dated: 11/7/17


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

EXHIBIT 1 (REVISED)



Cefalo, James

From: Rob Harris <rharris@holdenlegal.com>
Sent: Tuesday, November 07, 2017 11:08 AM
To: Cefalo, James; T. J. Budge; Travis Thompson; Kent Fletcher (wkf@pmt.org)
Cc: 'Daryl Klassen'
Subject: Signed Stipulation for MPH Farms Transfer Nos. 81333, 81337, and 81338
Attachments: 20171027 Addendum-signed all.pdf

Hearing Officer Cefalo:

In response to the concerns raised in your email below, the parties circulated and agreed to the provisions of the attached *Addendum to Stipulation for Settlement of Protests*. The addendum provides that the in-person inspection provisions do not need to be included in the transfer approval, but that the rights in those provisions are enforceable by contract. This change resolves the concern you raised.

With this *Addendum*, you should have everything you need to proceed with the issuance of the approval for 81338.

The original stipulation calls for an amended transfer for 81333 that will need to be readvertised. We will file the amended transfer as soon as we are able.

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.

Thank you for your attention to all of these matters.



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From: Cefalo, James [mailto:James.Cefalo@idwr.idaho.gov]
Sent: Tuesday, October 24, 2017 9:05 AM
To: Rob Harris <rharris@holdenlegal.com>; T. J. Budge <tjb@racinelaw.net>; Travis Thompson <tlh@idahowaters.com>; Kent Fletcher (wkf@pmt.org) <wkf@pmt.org>
Subject: RE: Signed Stipulation for MPH Farms Transfer Nos. 81333, 81337, and 81338

Dear Parties,

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Thank you for working cooperatively to find a resolution of the issues of protest for these transfers. I have reviewed the proposed conditions and have only one concern. Condition c on page 2 and Condition d on page 3 grant the protestants a right to request an in-person inspection of the pivot system. I am concerned about adding this condition to the transfer approval because it does not relate to IDWR, the state of Idaho, or the Idaho water laws in any way. It appears to be a private agreement to grant the protestants access to the proposed place of use under certain conditions. If the condition is added to the water right, IDWR may become responsible for enforcement of that private right of access. Although I don't have any issues with the idea or with the parties adopting a right of inspection as a term of the settlement agreement, I am concerned about adding the term as a condition on the water right.

Please let me know if it is acceptable to move forward with the settlement agreement without adding condition c on page 2 and condition d on page 3 to the transfer approvals.

James Cefalo

From: Rob Harris [<mailto:rharris@holdenlegal.com>]
Sent: Monday, October 16, 2017 11:08 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Cc: T. J. Budge <tjb@racinelaw.net>; Travis Thompson <tlh@idahowaters.com>; Kent Fletcher (wkf@pmt.org) <wkf@pmt.org>
Subject: Signed Stipulation for MPH Farms Transfer Nos. 81333, 81337, and 81338

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,



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