

OCT 17 2016

Department of Water Resources
Eastern Region

AGREEMENT TO RESOLVE PROTEST

THIS AGREEMENT is made and entered into as of the date of the last signature hereto by and between NATHAN D. CARPENTER and CRYSTAL A. CARPENTER, husband and wife ("Carpenter") and REUBEN H. BABCOCK and MARJORIE BABCOCK, husband and wife, and their son RUSSELL BABCOCK ("Babcock") and BOYD B. BURNETT and SANDRA P. BURNETT, husband and wife ("Burnett").

RECITALS

- A. Carpenter is the owner of the following described property in Butte County, Idaho:
Township 5 North, Range 26 East, Boise Meridian, Butte County, Idaho.
Section 29: E $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, and the E $\frac{1}{2}$ NW $\frac{1}{4}$, EXCEPT the right-of-way of the Utah Construction Company Canal.
(the "Carpenter Property").
- B. Babcock is the owner of the following described property in Butte County, Idaho:
Township 5 North, Range 26 East, Boise Meridian, Butte County, Idaho. Section 29: S $\frac{1}{2}$ SE $\frac{1}{4}$, Section 32: E $\frac{1}{2}$ E $\frac{1}{2}$
(the "Babcock Property").
- C. Burnett is the owner of the following described property in Butte County, Idaho which is located immediately South of the Carpenter Property and North of the Babcock Property:
Township 5 North, Range 26 East, Boise Meridian, Butte County, Idaho. Section 29: N $\frac{1}{2}$ SE $\frac{1}{4}$ and Section 20: S $\frac{1}{2}$ SE $\frac{1}{4}$
(the "Burnett Property").
- D. Burnett is the owner of Water Rights Nos. 34-14167 and 34-14169 (the "Burnett Ground Water Rights") which provide for the diversion of ground water from a well on the Carpenter Property (the "Carpenter Well") to irrigate 69 acres of the Burnett Property. On March 30, 2015, Burnett filed Application for Transfer 79938 with the Idaho Department of Water Resources ("IDWR") to move the point of diversion of the Burnett Ground Water Rights to a new well to be drilled in the Eastern portion of the Burnett Property (the "Transfer Application").
- E. On May 1, 2015, Carpenter filed with IDWR a Notice of Protest to the Application (the "Carpenter Protest").
- F. On April 27th and 28th, 2015, Babcock filed with IDWR Notices of Protest to the Application (the "Babcock Protests").

- G. Carpenter, Babcock and Burnett now desire to resolve the Carpenter and Babcock Protests on the terms and conditions set forth below.

TERMS AND CONDITIONS

1. **INCORPORATION OF RECITALS.** The Recitals set forth above are an integral part of this agreement and are fully incorporated herein by this reference.
2. **CONSIDERATION.** Each party's agreement to complete performance of all of the provisions set forth below is in consideration of the other parties' agreement to complete performance of all of the provisions set forth below.
3. **WITHDRAWAL OF CARPENTER & BABCOCKS PROTESTS.** Carpenter and Babcock hereby agree to withdraw the Carpenter and Babcock Protests.
4. **NEW WELL.** Burnett shall drill the new well, which shall become the new point of diversion approved by IDWR pursuant to the Transfer Application #79938, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec.29, T.5N., R.26 E.B.M. of the Burnett Property as depicted on the map attached hereto as Exhibit A. The new well shall not be drilled anywhere in the strip of land that lies between the Northern fence on the Carpenter Property and the Section line between Sections 20 and 29, T.5N., R.26 E.B.M., Butte County, Idaho as depicted on the map attached hereto as Exhibit A.
 - a. The casing for the new well shall be no more than sixteen (16) inches in diameter.
 - b. At no time shall the diversion of ground water from the new well exceed 1.1 cfs or 55 inches. As specified in Water Rights 34-14167 and 34-14169.
 - c. Burnett, Babcock and Carpenter also agree that their respective wells will never divert more than their respective water rights, with the exception of the other water rights, not owned by Babcock, which are currently being diverted from the Babcock well.
 - d. No other water rights shall ever be transferred to, or diverted from, the Burnett, Babcock or Carpenter Properties with the exception of Babcock's water right, currently being diverted from a well in Township 5 North, Range 26 East, Boise Meridian, Butte County, Idaho. Section 29: NW $\frac{1}{4}$ SE $\frac{1}{4}$.
 - e. Burnett and successors and/or assigns agrees that Babcock is allowed to drill a new well at some future time in the South East corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec 29, T.5N., R26 E.B.M.

of the Burnett Property which is within the same quarter, quarter as the current point of diversion for the Babcock water rights.

- f. All parties to this agreement may drill replacement wells if and when necessary, on condition that any well being replaced will have the old well decommissioned per IDWR Rules and Regulations.

5. OTHER PROVISIONS.

- a. Each covenant, condition and restriction of this Agreement shall be a burden on the Carpenter, Babcock and Burnett Properties, appurtenant to and for the benefit of all the Properties, shall run with the titles to the Babcock, the Burnett and the Carpenter Properties, shall inure to the benefit of and be binding upon Carpenter, Babcock and Burnett and their successors and assigns. This Agreement shall be recorded in the records of Butte County, Idaho.
- b. In the event any provision of this Agreement or any part thereof shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or part thereof, shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby, it being agreed that such remaining provision shall be construed in a manner most closely approximately the intention of the parties with respect to the invalid, void, or unenforceable provision or part thereof.
- c. The validity, meaning and effect of this Declaration shall be determined in accordance with the laws of the State of Idaho, and the provisions hereof shall be construed liberally to effectuate their purpose.
- d. The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.
- e. All notices and communications under this Agreement shall be in writing and shall be (i) delivered in person or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or by overnight express carrier, addressed in each case to the party's address set forth below, or (iii) sent by facsimile or electronic mail to the facsimile number or electronic mail address set forth below with the original

to follow by mail in the manner described above. It is provided, however, that any party may change its respective address for purposes of receipt of any such communication by giving ten (10) days prior written notice of such change to the other party hereto in the manner provided above. All notices sent pursuant to the terms of this paragraph shall be deemed received (i) if sent by overnight, express carrier, on the next business day immediately following the day sent, (ii) if sent by registered or certified mail, on the third business day following the day sent or (iii) if sent by facsimile or electronic mail on the date so sent.

Carpenter: PO Box 307
Arco, Idaho, 83213
Fax: _____
E-mail: crystal@atcnet.net

Babcock: 3428 West 3120 North
Moore, Idaho 83255
Fax: _____
E-mail: _____

Burnett: 3219 North 3400 West
Moore, Idaho, 83255
Fax: _____
E-mail: boydburn@yahoo.com

- f. This Agreement 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.
- g. No provision of this Agreement may be waived, modified, or amended except by written agreement executed by all of the parties hereto.
- h. This Agreement 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 County of Butte, State of Idaho. This Agreement is subject to interpretation in accordance with the laws of the State of Idaho.
- i. If a suit, action, or other proceeding arising out of or related to this Agreement is instituted by any party to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, expert witness fees, and costs (i) incurred in any

settlement negotiations, (ii) incurred in preparing for, prosecuting or defending any suit, action, or other proceeding, and (iii) incurred in preparing for, prosecuting or defending any appeal of any suit, action, or other proceeding. For the purpose of this section, "attorney fees" shall mean and include (i) attorney fees and (ii) paralegal fees. This section shall survive and remain enforceable notwithstanding any rescission of this Agreement or a determination by a court of competent jurisdiction that all or any portion of the remainder of this Agreement is void, illegal, or against public policy.

- j. Each party agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purpose of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement on the dates set forth below.

Babcocks:

Date: 6, 21, 16

Reuben H. Babcock
REUBEN H. BABCOCK

Date: 6/21/16

Marjorie Babcock
MARJORIE BABCOCK

Date: _____

RUSSEL BABCOCK

Carpenter:

Date: 6/17/2016

Nathan D. Carpenter
NATHAN D. CARPENTER

Date: 6/17/2016

Crystal Carpenter
CRYSTAL A. CARPENTER

Burnett:

Date: 6-17-2016

Boyd B. Burnett
BOYD B. BURNETT

Date: 6-17-2016

Sandra P. Burnett
SANDRA P. BURNETT

STATE OF IDAHO)
) ss.

County of Butte)

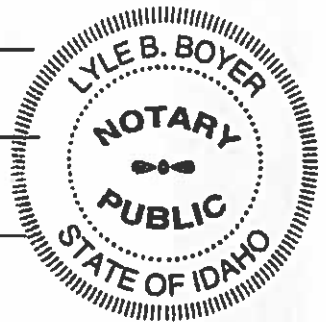
On this 17th day of June ^B~~May~~, 2016, before me, the undersigned, a notary public in and for said state, personally appeared NATHAN D. CARPENTER, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Lyle B. Boyer
Notary Public for Idaho

Residing at: Arco, ID

Comm. Expires: 6-5-2021



STATE OF IDAHO)
) ss.

County of Butte)

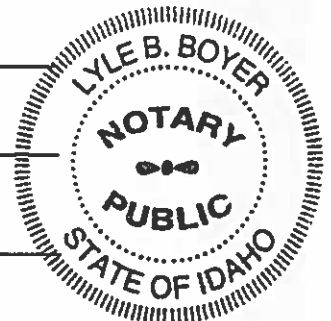
On this 17th day of June ^B~~May~~, 2016, before me, the undersigned, a notary public in and for said state, personally appeared CRYSTAL A. CARPENTER, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Lyle B. Boyer
Notary Public for Idaho

Residing at: Arco, ID

Comm. Expires: 6-5-2021

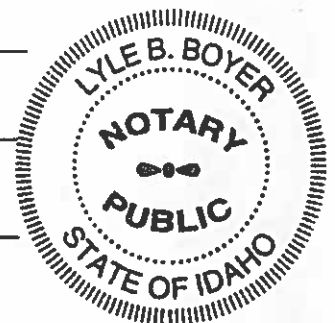


STATE OF IDAHO)
) ss.
County of Butte)

On this 17th day of June ¹³~~May~~, 2016, before me, the undersigned, a notary public in and for said state, personally appeared BOYD B. BURNETT, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Lyle B. Boyer
Notary Public for Idaho
Residing at: Arco, ID
Comm. Expires: 5 June 2021

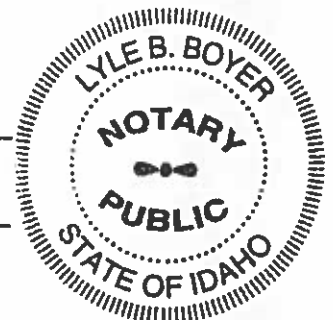


STATE OF IDAHO)
) ss.
County of Butte)

On this 17th day of June ¹³~~May~~, 2016, before me, the undersigned, a notary public in and for said state, personally appeared SANDRA P. BURNETT, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Lyle B. Boyer
Notary Public for Idaho
Residing at: Arco, ID
Comm. Expires: 5 June 2021

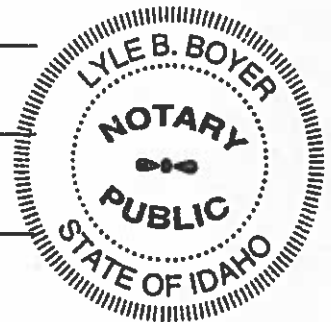


STATE OF IDAHO)
) ss.
County of Butte)

On this 21st day of June ^B~~May~~, 2016, before me, the undersigned, a notary public in and for said state, personally appeared REUBEN H. BABCOCK, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Lyle B. Boyer
Notary Public for Idaho
Residing at: Arco, ID
Comm. Expires: 6-5-2021

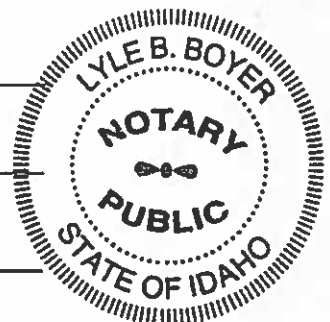


STATE OF IDAHO)
) ss.
County of Butte)

On this 21st day of June ^B~~May~~, 2016, before me, the undersigned, a notary public in and for said state, personally appeared MARJORIE BABCOCK, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Lyle B. Boyer
Notary Public for Idaho
Residing at: Arco, ID
Comm. Expires: 6-5-2021



STATE OF IDAHO)
) ss.

County of _____)

On this _____ day of _____ May, 2016, before me, the undersigned, a notary public in and for said state, personally appeared RUSSELL BABCOCK, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for Idaho

Residing at: _____

Comm. Expires: _____

