

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 PERMIT NO. 35-14240, 35-14241, 35-
14242, 35-14243 and 35-14244 IN THE
NAME OF LANCE AND/OR LISA FUNK
PARTNERSHIP

**AMENDED STIPULATION FOR
WITHDRAWAL OF PROTESTS**

THIS AMENDED STIPULATION FOR WITHDRAWAL OF PROTESTS (this "Amended Stipulation") is made and entered into as of the 27th day of FEBRUARY, 2015, by and between Lance and/or Lisa Funk Partnership (hereinafter, "Funk"), and A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (hereinafter, collectively the "Coalition" or "Protestants"). Funk and the Coalition may hereinafter be collectively referred to as the "Parties."

RECITALS:

- A. Funk filed the above Applications for Permit on February 8, 2012 (amended on March 14, 2012) (hereinafter, the "Water Right Applications"). The Water Right Applications sought new water rights for the irrigation of up to 1,879.3 acres.
- B. As mitigation for the depletive effects of the new diversions under the Water Right Applications, Funk proposed to use certain water rights owned by Magnida Nitrogen Idaho, LLC d/b/a/ "Magnida", in particular Water Right Nos. 35-14014 and 35-14015 (the "Water Rights"). The proposed mitigation is temporary in nature, in that the current agreement between Funk and Magnida only allows for the use of the Water Rights for

mitigation through the 2015 irrigation season – though, it may be extended upon the provisions of the agreement for additional one-year terms.

- C. The Coalition protested the Water Right Applications, challenging the adequacy of temporary, or non-permanent, mitigation in offsetting the impacts of the new diversions proposed under Water Right Applications.
- D. In lieu of participating in administrative hearings concerning the Water Right Applications, as provided for under Idaho law, Funk and the Coalition previously executed a stipulation to resolve the Coalition's protest, some of the conditions of which were amended or removed by the hearing officer in his draft approvals. In order to address the hearing officer's concerns, the Parties have agreed to enter into this Amended Stipulation.

AGREEMENTS:

1. **Withdrawal of Application for Permit No. 35-14244:** Funk hereby withdraws Application for Permit No. 35-14244. Except for eighty (80) acre-feet retained by Magnida for site testing and other miscellaneous uses (as set forth in Funk's agreement with Magnida), Funk shall use the entire remaining portion of the Water Rights to mitigate for impacts of diversions under the remaining applications (i.e. 35-14240, 35-14241, 35-14242 and 35-14243) so long as they are available under the current agreement and shall not allow the entire remaining portion of the Water Rights to be used for any purpose other than the mitigation of the remaining Water Rights Applications, including mitigation for other consumptive uses.
2. **Conditions To Be Included On The Water Right Permits.** IDWR shall include the following conditions, or conditions substantially in the same form, in the final order issuing permits for the Water Right Applications:
 - a. "Prior to diversion of water under this right, the right holder shall install and maintain a flow meter measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works."
 - b. "To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official records for the following water rights will be changed to show the diversion and use of water is not authorized because the rights, or a portion thereof, are being dedicated to mitigation purposes."

Right No.	Use Changed Mitigation Rate to Mitigation (cfs)	Mitigation Volume (AF)	Mitigation Acres
35-14014	Industrial 4.44	3215.5	N/A
35-14015	Industrial 3.95	2858.3	N/A
Combined Limit:			

If the specified mitigation rights, or portions thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water, a priority call, or a termination in lease contract then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction in mitigation rights."

- c. "In the event the right holder does not maintain the right to use water rights 35-14014 and 35-14015 for mitigation purposes, the right holder may propose a substitute mitigation plan. The substitute plan must be provided to the Department no later than December 1st in the year immediately prior to the irrigation season where the substitute plan is proposed to be implemented. The Department will advertise the substitute plan to the public and the protestants shall have the right to challenge the substitute plan. If the substitute plan is not approved by the Department, the right holder shall not divert under this right."
- d. "By December 1st of each year, the right holder shall provide a written report to the Department describing the number and location of acres irrigated that year, the volume of water diverted under this right, the source of mitigation for the next irrigation season, and the number and location of acres proposed to be irrigated in the following year."
- e. "As resources allow, the Department will conduct at least one in-person field examination of the authorized place of use of this right each year to verify the required mitigation and authorized irrigation under this right prior to June 15th of each year. It shall be the responsibility of the right holder to follow up with the Department by June 15th of each year to determine if the field examination was performed. If the Department is unable to conduct the field examination for any reason, the right holder or its consultant shall perform the field examination and report findings from the field examination to the Department and the protestants to this right by July 15th of each year."
- f. "The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestants and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein."

- g. "Noncompliance with any condition of this right, including the requirement for mitigation, 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."
3. **Notice Requirement to the Coalition.** Funk shall provide direct notice by mailing of any substitute mitigation plan filed under condition 2.c above. In the event notice is not properly made, Funk shall instruct the Department to start the advertisement process over to reopen the applicable protest period for the Coalition and others.
 4. **Failure to Comply with Conditions Included in the Water Right Applications.** Funk acknowledges that the failure to comply with any of the conditions of the Water Rights Applications may also subject Funk 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.
 5. **Resolution of Protests.** This Amended Stipulation is intended to resolve the Protest filed by the Coalition. Resolution of this Protest is conditioned upon the approval, by IDWR, of the conditions set forth in Paragraphs 1 and 2 in substantially the same form as set forth herein. If the conditions are not included on the permit for the Water Right Applications, then this Amended Stipulation shall be void. The Parties reserve the right to challenge any decision from IDWR that does not include the conditions set forth in Paragraphs 1 and 2.
 6. **Reservation of Rights.** The Parties agree and acknowledge that this Amended Stipulation only resolves the Coalition's protest of the Water Right Applications, and that the Coalition reserves all rights to pursue protests to other applications for permits and/or transfers in the future. The Parties shall not use this Amended Stipulation in any other administrative or judicial proceedings for any purpose, other than an action to enforce its terms as provided in paragraph 9 below.
 7. **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 Amended Stipulation have read and understand the Amended Stipulation, and warrant and represent that this Amended 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 Amended 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.

8. **Successors and Assigns.** This Amended 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.
9. **Waiver and Modification.** No provision of this Amended Stipulation may be waived, modified, or amended except by written agreement executed by all of the Parties hereto.
10. **Enforcement and Interpretation.** This Amended 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 Amended Stipulation is subject to interpretation in accordance with the laws of the State of Idaho.
11. **Counterparts.** This Amended 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.

LANCE AND/OR LISA FUNK PARTNERSHIP


By: Robert L. Harris, of the firm Holden, Kidwell,
Hahn, & Crapo, P.L.L.C.
*Attorneys for the Lance and/or Lisa Funk
Partnership*

A&B IRRIGATION DISTRICT, BURLEY IRRIGATION
DISTRICT, MILNER IRRIGATION DISTRICT, NORTH
SIDE CANAL COMPANY, AND TWIN FALLS CANAL
COMPANY

By: Paul L. Arrington, 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*

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LANCE AND/OR LISA FUNK PARTNERSHIP

By: Robert L. Harris, of the firm Holden, Kidwell,
Hahn, & Crapo, P.L.L.C.

*Attorneys for the Lance and/or Lisa Funk
Partnership*

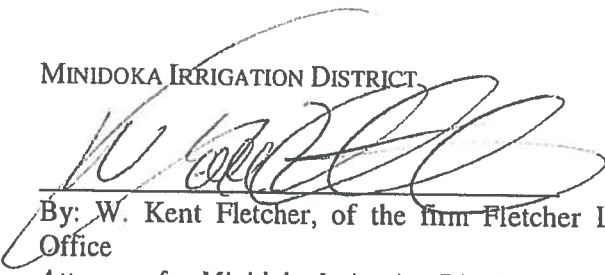
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DISTRICT, MILNER IRRIGATION DISTRICT, NORTH
SIDE CANAL COMPANY, AND TWIN FALLS CANAL
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By: Paul L. Arrington, of the firm Barker, Rosholt
& Simpson, LLP

*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

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Cefalo, James

From: Rob Harris [rharris@holdenlegal.com]
Sent: Friday, February 27, 2015 1:01 PM
To: Cefalo, James
Cc: Paul Arrington (pla@idahowaters.com); Kent Fletcher (wkf@pmt.org); Travis Thompson; Randy Budge (rcb@racinelaw.net)
Subject: Executed Amended Funk Stipulation
Attachments: SWC.Stipulation.Amended.Signed.pdf

James:

Attached is an executed amended stipulation for the Funk applications for permit. We previously discussed the revised condition at Condition 2.e and it was acceptable to you. With this stipulation, we ask that you issue the permits because the remaining condition language mirrors the language in the draft that was previously circulated, and there should not be concern from us or the protestants if these conditions are included. Also, I have been in contact with Randy Budge, the attorney for IGWA. He did not voice any objection to the prior draft permits, and has also had a chance to review the revised conditions in the SWC stipulation, and is OK with the changes that have been made. He authorized me to represent to you that IGWA is OK with issuance of the permits as well. I have copied him on this email.

If you have any questions or concerns, let me know. Otherwise, we anticipate that the permits will be issued in short order.

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

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