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Department of Water Resources
Eastern Region

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Attorneys for Snake River Valley Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 01-10626 IN THE NAME OF
SNAKE RIVER VALLEY IRRIGATION
DISTRICT

**STIPULATION FOR
WITHDRAWAL OF PROTESTS**

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS (this "Stipulation") is made and entered into as of the 12th day of JUNE, 2014, by and between **Snake River Valley Irrigation District** (hereinafter, "SRVID"), and protestants to Application for Permit No. 01-10626 known as the **Surface Water Coalition**, consisting of **A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company** (hereinafter, collectively the "SWC"). SRVID and the SWC may hereinafter collectively be referred to as the "Parties."

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RECITALS:

- A. Application for Permit No. 01-10626 (hereinafter, simply "01-10626") seeks a water right from the Idaho Department of Water Resources ("IDWR") for 585 cfs with a priority date of June 19, 2013 for ground water recharge purposes primarily in Bingham County, Idaho.
- B. On September 24, 2012, after 01-10626 was advertised pursuant to Idaho law, it was protested on various grounds by the SWC. 01-10626 was also protested by the Idaho Department of Fish and Game (hereinafter, "IDFG") and the Idaho Power Company ("IPCO").
- C. SRVID desires to conduct managed ground water recharge both within the SRVID Canal and at off-canal sites with recharge water delivered through the SRVID Canal. In both instances, it is proposed that the ground water recharge will be measured and monitored on a continuous basis. A map of the proposed recharge place of use primarily within the SRVID Canal is attached hereto as **Exhibit 1**.
- D. Pursuant to Idaho Code § 42-602 *et seq.*, the State of Idaho, acting through IDWR, is charged with the orderly distribution of water consistent with the prior appropriation doctrine within the State of Idaho. Idaho Water District #1 ("Water District #1") is the instrumentality by which IDWR administers water rights in the Upper Snake River Basin.
- E. Idaho Code § 42-234 vests IDWR with the authority to grant permits and licenses for ground water recharge subject to later control from the director:

(4) The director of the department of water resources may regulate the amount of water which may be diverted for recharge purposes and may reduce such amount, even though there is sufficient water to supply the entire amount originally authorized by permit or license. To facilitate necessary financing of an aquifer recharge project, the director may fix a term of years in the permit or license during which the amount of water authorized to be diverted shall not be reduced by the director under the provisions of this subsection.

(5) To ensure that other water rights are not injured by the operations of an aquifer recharge project, the director of the department of water resources shall have the authority to approve, disapprove or require alterations in the methods employed to achieve ground water recharge. In the event that the director determines that the methods of operation are adversely affecting existing water rights or are creating conditions adverse to the beneficial use of water under existing water rights, the director shall order the cessation of operations until such alterations as may be ordered by the director have been accomplished or such adverse effects otherwise have been corrected.

Idaho Code § 42-234(4)-(5).

- F. Idaho Code § 42-1737(a) requires the approval of ground water recharge projects by the Idaho Water Resource Board for project proposals that seek “the diversion of natural flow water appropriated pursuant to section 42-234, Idaho Code, for a managed recharge project in excess of ten thousand (10,000) acre-feet on an average annual basis . . .”
- G. In lieu of participating in administrative hearings concerning 01-10626, as provided for under Idaho law, the Parties hereby agree as set forth below, the result of which is withdrawal of the Protestants’ protests and issuance of a permit for development of 01-10626.

AGREEMENTS:

1. **Conditions To Be Included On Permit for 01-10626.** IDWR shall 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 order issuing Permit No. 01-10626:
 - a. “This right is subject to all applicable provisions of Idaho Code § 42-234.”
 - b. “Subject to all prior rights.”
 - c. “Water may be diverted for recharge under this right when 2,700 cfs or more is flowing past Minidoka Dam.”
 - d. “The diversion of water under this right shall not exceed ten thousand (10,000) acre-feet on an average annual basis.”
2. **Pending Storage Water Right Claims.** The Parties have been involved in negotiations regarding the final form of certain storage water right claims concerning the refill of storage space in the Upper Snake Reservoir System evacuated for flood control purposes. The claims have been referred to as “Refill 1” and “Refill 2.” The Parties acknowledge and agree that the Refill 2 right will receive a priority date senior to 01-10626 and that the Refill 2 right will not be subordinated to 01-10626 as of the date of this Agreement.¹ The Refill 1 right will be subordinate to 01-10626 and any other water rights developed in the future. If the Refill 1 and 2 water rights are ultimately settled, the Parties will not object to the above terms in the final form of the SF5s required to finalize the SRBA decree of the claims referenced above.

¹ The condition preliminarily agreed to on Refill 2 which addresses this is as follows: “This right is subordinate to water rights permitted or licensed after April 11, 1994 and prior to May 5, 2014.” The condition does not reference “applications” by design to include recharge applications or any other applications that are currently pending before IDWR, the result of which is subordination of 01-10626 to the Refill 2 water right

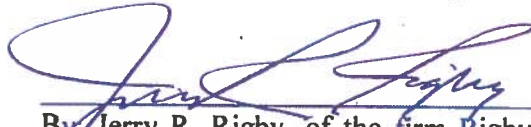
Notwithstanding the above, the Parties acknowledge that as of the date of this Agreement, Refill 1 and Refill 2 have not been decreed in the SRBA and the conditions of both rights remain subject to negotiation. If Refill 1 and Refill 2 are not decreed in the SRBA for any reason, then as to the issue of refill of storage space in the Upper Snake River reservoir system evacuated for flood control purposes, SRVID agrees that it will not exercise this water right in a manner that would interfere with the refill of storage water to replace flood control releases in the Upper Snake River reservoir system. Furthermore, nothing herein shall affect the Parties' rights with respect to any other pending claims filed in the SRBA in the event the water right claims referenced above are not decreed as anticipated.

3. **Out-of-Priority Recharge Under 01-10626.** The issuance of a permit for 01-10626 does not authorize out-of-priority diversions for ground water recharge under the right itself. However, nothing herein shall be deemed to prevent SRVID from pursuing the right to such out-of-priority diversions and/or use of storage water for mitigation of such recharge through separate proceedings which may be required under Idaho law.
4. **Issuance of Proposed Order and Subsequent Withdrawal of Protests.** The Parties shall instruct IDWR to issue a proposed order including the conditions set forth in Paragraph 1 as set forth herein. The Parties shall have fourteen (14) days thereafter to object to the language in the proposed order by filing notice of such objection with IDWR if the conditions set forth in Paragraph 1 are not included. If no objections are received within the fourteen (14) day time period, the protests of the Protestants shall be deemed withdrawn, and IDWR shall thereafter issue a final order approving 01-10626 consistent with this Agreement. SRVID may submit a copy of this executed Stipulation to IDWR and notify IDWR of this procedure and withdrawal of protests. If IDWR does not include the conditions agreed to in Paragraph 1, this stipulation shall be deemed null and void and the Parties will retain their respective rights in this contested case, unless the Parties otherwise agree to IDWR's conditions.
5. **Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves the protests to 01-10626, and that the Protestants reserve all rights to protest other applications for ground water recharge permits, transfers, and any other proceedings that may be initiated as referenced in Paragraph 3 in the future. 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 9 below.
6. **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 Agreement 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.

7. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of each Parties' officers, directors, shareholders, heirs, successors and assigns, and shall be specifically enforceable.
8. **Waiver and Modification.** No provision of this Agreement may be waived, modified, or amended except by written agreement executed by all of the Parties hereto.
9. **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.
10. **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.

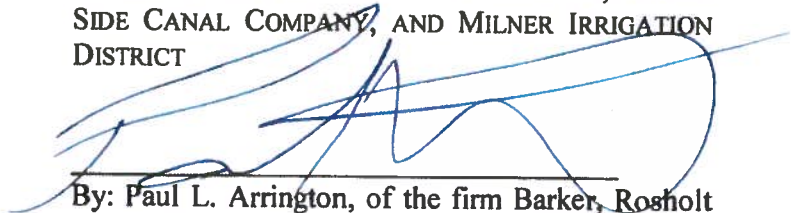
SNAKE RIVER VALLEY IRRIGATION DISTRICT



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



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AMERICAN FALLS RESERVOIR DISTRICT #2 AND
MINIDOKA IRRIGATION DISTRICT



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EXHIBIT 1

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Proposed Place of Use

