

Jerry R. Rigby, Esq. (ISB #2470)
jrigby@rex-law.com
RIGBY, ANDRUS & RIGBY LAW, PLLC
P.O. Box 250
25 N. 2nd E.
Rexburg, ID 83440
Telephone: (208) 356-3633
Facsimile: (208) 356-0768

Robert L. Harris, Esq. (ISB #7018)
rharris@holdenlegal.com
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

Attorneys for Snake River Valley Irrigation District

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Department of Water Resources
Eastern Region

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 the **Idaho Department of Fish and Game** ("IDFG"). SRVID and the IDFG may hereinafter collectively be referred to as the "Parties."

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

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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 IDFG. 01-10626 was also protested by the United States Department of the Interior, the Surface Water Coalition (the "SWC"), 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. "Water may only be diverted under this right in an amount that does not reduce flows in the Snake River below 2,070 cfs measured in the Snake River at Blackfoot U.S.G.S. Gage No. 13062500."
 - b. "Absent engineering controls to prevent fish entrainment into recharge facilities, when any amount of water is available for diversion under this right, and after consultation by the right holder with the Idaho Department of Fish and Game, the amount of water diverted under this right from the river will be adjusted up and down at a rate which minimizes the possibility of fish entrainment in the recharge facilities. Provided, however, that flows diverted into recharge facilities may be adjusted, without consultation, by Water District No. 1 personnel consistent with its statutory duties to regulate and adjust diversions when all or a portion of this right is no longer in priority."
 - c. "Diversions off of the right holder's private canals to designated off-canal recharge sites shall be designed and constructed as necessary to minimize negative impacts to fish. The right holder shall provide information concerning the design of such diversion structures to the Idaho Department of Fish and Game for review and comment prior to construction."
 - d. "Upon a good faith request from the Idaho Department of Fish and Game, the right holder shall meet to discuss and attempt to resolve in good faith any concerns associated with the exercise of this right and potential negative effects on fish and wildlife resources."
2. **No Requirement for Screening of SRVID Canal Heading.** To ensure there is no confusion with the interpretation of paragraph 1.c. above, the Parties agree that nothing in this Stipulation shall require SRVID to install fish screens or other equipment at the

SRVID Canal diversion heading on the Snake River.¹ Paragraph 1.c. only requires installation of such equipment for the diversion structures associated with off-canal recharge sites that divert from the SRVID Canal or a lateral canal or ditch that diverts from the SRVID Canal. Notwithstanding the above, nothing herein shall prevent the Parties from agreeing in the future to the installation of fish screens or other equipment at the diversion heading pursuant to terms and conditions agreed to by the Parties.

3. **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.
4. **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. 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 8 below.
5. **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.
6. **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.

¹ The legal description for the SRVID Canal diversion is the NWSENE of Section 26, Township 1S, Range 36E.

7. **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.
8. **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.
9. **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



By: Jerry R. Rigby, of the firm Rigby, Andrus &
Rigby Law, P.L.L.C.

Attorneys for Snake River Valley Irrigation District

IDAHO DEPARTMENT OF FISH AND GAME



By: W. Dallas Burkhalter, of the Idaho Attorney
General's Office

*Attorneys for the Idaho Department of Fish and
Game*

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EXHIBIT 1

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Proposed Place of Use

