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Department of Water Resources
Eastern Region

Attorneys for various Protestants

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 79509 IN THE NAME OF DIRK PARKINSON	Protestants' Motion to Grant Withdrawal of Application Upon Conditions
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The protestants in the above-captioned matter represented by Racine Olson Nye Budge & Bailey, Chartered, respectfully move the Idaho Department of Water Resources (the "Department") pursuant to rule 305 of the Department's Rules of Procedure to impose conditions upon the Applicant's withdrawal of Application for Transfer No. 79509.

Counsel for the protestants was informed on Monday, February 9, 2015, that the Applicant notified IDWR verbally that he would be filing a notice of withdrawal of the application. While the protestants have not yet received the written notice, they presume it is forthcoming and wish to request the withdrawal be granted with conditions.

Rule 305 allows the Application to be withdrawn by filing notice of withdrawal with the Department and serving all parties with a copy.¹ The Rule further states, "Unless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing." Thus, the filing of a notice of withdrawal does not guarantee it will be effective. The presiding officer retains authority to issue an order affecting the withdrawal.

The notice of withdrawal was not filed at least 14 days before the hearing; however, the protestants do not oppose the withdrawal as long as it is granted with three conditions.

¹ IDAPA 37.01.01.305.

First, the Notice of Protest filed by each protestant should remain in place against any application for transfer filed subsequently by the Applicant that is substantially similar to the Application; or, alternatively, the Applicant should be required to pay the filing fee for each Notice of Protest a protestant files against a subsequent application that is substantially similar to the Application. The protestants collectively filed 24 Notices of Protest, each with a \$25 fee, for a total of \$600. It would be prejudicial for the Applicant to refile a substantially similar application and thereby force the protestants to pay an additional \$600 in filing fees.

Second, the Applicant should be required to mail to each protestant a copy of any application filed subsequently by the Applicant that is substantially similar to the Application.

Third, the Applicant should be precluded from circumventing the November 6, 2014, *Notice of Hearing and Disclosure Order* simply by withdrawing the Application and filing a substantially similar application. The protestants advocated at the pre-hearing conference for the hearing on the Application to be held in the Spring of 2015, but at the Applicant's urging a hearing was scheduled in February. The protestants then hired legal counsel and expended great time and incurred significant expense to gather and submit evidence and prepare for the February 12th hearing. The protestants will be prejudiced if the Applicant is permitted to evade the disclosure order and remake his case simply by withdrawing the Application and refiling a substantially similar application.

Therefore, the protestants respectfully request that the following conditions be imposed upon the withdrawal of the Application:

- 1) Should Applicant or any entity with which Applicant is a direct or indirect owner file an application that is substantially similar to Application for Transfer no. 79509, then:
 - a. Applicant must mail to each protestant in the current matter a copy of such application;
 - b. All Notices of Protest filed in the current matter will remain in place against such application; and
 - c. Applicant may only submit evidence that was disclosed in accordance with the November. 6, 2014, *Notice of Hearing and Disclosure Order*.

RESPECTFULLY SUBMITTED this 10th day of February, 2015.

RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED

By: 
Thomas J. Budge
Joseph G. Ballstaedt

CERTIFICATE OF SERVICE

I CERTIFY that on this 10th day of February, 2015, the above document was filed on the following persons in the manner indicated:


T.J. Budge

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