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L A W O F F I C E S

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Department of Water Resources  
Eastern Region

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December 1, 2014

James Cefalo  
Hearing Officer  
Idaho Department of Water Resources  
900 N. Skyline Drive, Suite A  
Idaho Falls, ID 83402-1718

**RE: Executed Stipulations for Withdrawal of Protest in the Matter of Application for Permit Nos. 35-14240 through 35-14244 in the Name of Lance and/or Lisa Funk Partnership.**

Hearing Officer Cefalo:

Enclosed for processing are three fully executed *Stipulations for Withdrawal of Protests* regarding the above-referenced applications. The stipulations resolve the protests of the Surface Water Coalition, the Idaho Power Company, and Idaho Groundwater Appropriators, Inc. We request that the provisions set forth in paragraph 1 of the Idaho Power Company Stipulation and in paragraph 2 of both the Surface Water Coalition and IGWA's stipulations are incorporated into the issued permits. If you have any questions or concerns regarding the conditions, please communicate directly with the attorneys involved in these applications for both the applicant and the protestants.

Please note that the stipulation calls for the applicant to withdraw Application for Permit No. 35-14244. We request that that action not be undertaken until permits are issued for the other applications in order to ensure that the issued permits do not differ significantly from the conditions set forth in the stipulations. Only after the permits have been issued should Application for Permit No. 35-14244 be withdrawn. We note that the Department has a form for withdrawing an application for permit, which we will be happy to submit if the Department believes it is necessary. It seems that the language in the stipulations is enough for the Department to process the withdrawal of Application for Permit No. 35-14244.

With these stipulations in place, all protests to the above-referenced applications have been resolved. Therefore, the parties mutually request that the hearing currently scheduled for December 11<sup>th</sup> and 12<sup>th</sup> be vacated.

If you have any questions or concerns regarding the stipulations, please do not hesitate to contact the attorneys in this matter.

*Established in 1896*

James Cefalo  
December 1, 2014  
Page 2 of 2

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Best Regards,



Robert L. Harris  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

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Robert L. Harris (ISB # 7018)  
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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

**STIPULATION FOR  
WITHDRAWAL OF PROTESTS**

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS (this "Stipulation") is made and entered into as of the 1<sup>st</sup> day of December, 2014, by and between **Lance and/or Lisa Funk Partnership** (hereinafter, "Funk"), and the **Idaho Power Company**, (hereinafter, "IPCO"). Funk and IPCO 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. IPCO protested the Water Right Applications because of concerns relating to whether the Water Right Applications were complete, lack of sufficient information, and other concerns related to the criteria outlined in Idaho Code § 42-203A(5).
- D. Funk has already agreed to withdraw Application for Permit No. 35-14244, and will mitigate the remaining Applications for Permit with the Water Rights (except for eighty (80) acre-feet retained by Magnida for site testing and other miscellaneous uses).
- E. In lieu of participating in administrative hearings concerning the Water Right Applications, as provided for under Idaho law, Funk and IPCO hereby agree as set forth below, the result of which is withdrawal of the IPCO's protest in this matter.

#### **AGREEMENTS:**

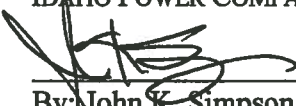
1. **Conditions To Be Included On The Water Right Permits.** IDWR shall include the following conditions, or conditions substantially in the same form, in the final order issuing permits for the remaining Water Right Applications (35-14240, 35-14241, 35-14242, 35-14243):
  - a. "The source of water diverted under this right is "Trust Water," which is identified in the 1984 Swan Falls Settlement and is defined as surface and ground water tributary to the Snake River between Milner Dam and Swan Falls. Diversions under this right may therefore be subject to curtailment if such diversions impact the established minimum stream flows of 3,900 cfs from April through October and 5,600 cfs from November through March at the Murphy gage. Further, this right shall be subject to review by the Director consistent with the terms limits and trust water review imposed upon trust water rights issued by the State and arising out of the 1984 Swan Falls Agreement."
2. **Resolution of Protests.** This Stipulation is intended to resolve the Protest filed by IPCO. Resolution of this Protest is conditioned upon the approval, by IDWR, of the condition set forth in Paragraph 1 in substantially the same form as set forth herein. If the conditions are not included on the permit for the remaining Water Right Applications, then this 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.
3. **Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves IPCO's protest of the Water Right Applications, and that the IPCO reserves all rights to pursue protests to other applications for permits and/or transfers 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 7 below.

4. **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.
5. **Successors and Assigns.** This Agreement 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.
6. **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.
7. **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.
8. **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.

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*

IDAHO POWER COMPANY

  
By: John K. Simpson, of the firm Barker, Rosholt &  
Simpson, LLP  
*Attorneys for Idaho Power Company*

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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

**STIPULATION FOR  
WITHDRAWAL OF PROTESTS**

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS (this "Stipulation") is made and entered into as of the 26 day of November, 2014, by and between **Lance and/or Lisa Funk Partnership** (hereinafter, "Funk"), and the Idaho Ground Water Appropriators, Inc., (hereinafter, "IGWA"). Funk and IGWA 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. IGWA protested the Water Right Applications because of concerns relating to the potential impacts to other water right holders, potential reduction in the quantity of water under existing water rights, potential insufficiency of the water supply, and possible conflict with the local public interest.
- D. In lieu of participating in administrative hearings concerning the Water Right Applications, as provided for under Idaho law, Funk and IGWA hereby agree as set forth below, the result of which is withdrawal of the IGWA'S protest in this matter.

#### **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. IDWR Condition 170, as stated on page 5 of the Hearing Officer's *Interlocutory Order Addressing Legal Question*.
  - b. "In the event the right holder does not maintain legal rights to use Water Right Nos. 35-14014 and 35-14015 for mitigation purposes, the right holder may thereafter pursue and secure other mitigation acceptable to the Department. The right holder shall submit a substitute mitigation plan to the Department, with a copy submitted to the Protestants, no later than December 1<sup>st</sup> immediately prior to the irrigation season for which the mitigation is sought. Protestants shall have the right to challenge the substitute mitigation plan pursuant to the laws and regulations governing such challenges, including Idaho Code § 42-1701A(3) and IDAPA 37.01.01.730.02.e, as the same may be amended. If the substitute mitigation is not approved by the Department through a final order, the right holder shall not divert under this right."
  - c. "As a condition of the exercise of this right, the right holder shall submit the following information, by the following dates, to the Department and IGWA:

- i. By December 1<sup>st</sup> of each year, a written report describing the source of mitigation for this right for the following year's irrigation season.
    - ii. By April 15<sup>th</sup> of each year, a written report prepared by a qualified consultant describing the acres planned for irrigation during the current irrigation season.
    - iii. By August 15<sup>th</sup> of each year, a written report prepared by a qualified consultant verifying the acres actually irrigated during the current irrigation season."
  - d. "If the right holder fails to comply with any deadlines identified above, the right holder shall not be permitted to divert water under this water right at any time during the irrigation season.
  - e. "The Department shall 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. In order to offset the costs of the field exam, and as a condition of the exercise of this right, the right holder shall remit a fee of \$500.00 to the Department by April 15<sup>th</sup> of each year the right is anticipated to be exercised to reimburse the Department for staff time associated with the field examination."
  - f. "The right holder shall retain membership in and pay annual assessments to the American Falls/Aberdeen Ground Water District, or its successor, properly levied against the use of water under this right."
3. **Failure to Comply with Conditions Included in the Water Right Applications.** Upon the failure by Funk, its successors or assigns, to comply with any of the conditions of the Water Right Applications, any and all diversions under the Water Rights Applications shall immediately cease until such time as Funk, its successors or assigns, can show that it is in compliance with the conditions of the Water Right Applications; provided, that the failure to submit a written report describing the upcoming year's mitigation by December 1<sup>st</sup> shall result in the inability to divert water pursuant to the Water Right Applications at any time during the upcoming irrigation season. In addition, 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.
4. **Resolution of Protests.** This Stipulation is intended to resolve the Protest filed by IGWA. 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 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.

5. **Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves IGWA's protest of the Water Right Applications, and that the IGWA reserves all rights to pursue protests to other applications for permits and/or transfers 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 Party's 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.

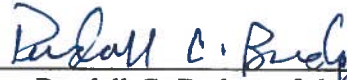
LANCE AND/OR LISA FUNK PARTNERSHIP



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

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

IDAHO GROUND WATER APPROPRIATORS, INC.



By: Randall C. Budge, of the firm, Racine, Olsen,  
Nye, Budge & Bailey, Chtd.

*Attorneys for Idaho Ground Water Appropriators,  
Inc.*

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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

**STIPULATION FOR  
WITHDRAWAL OF PROTESTS**

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS (this "Stipulation") is made and entered into as of the 1<sup>st</sup> day of December, 2014, 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 hereby agree as set forth below, the result of which is withdrawal of the Coalition's protest in this matter.

#### **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.
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  - a. IDWR Condition 170, as stated on page 5 of the Hearing Officer's *Interlocutory Order Addressing Legal Question*.
  - b. "In the event the right holder does not maintain legal rights to use Water Right Nos. 35-14014 and 35-14015 for mitigation purposes, the right holder may thereafter pursue and secure other mitigation acceptable to the Department. The right holder shall submit a substitute mitigation plan to the Department, with a copy submitted to the Protestants, no later than December 1<sup>st</sup> immediately prior to the irrigation season for which the mitigation is sought. Protestants shall have the right to challenge the substitute mitigation plan pursuant to the laws and regulations governing such challenges, including Idaho Code § 42-1701A(3) and IDAPA 37.01.01.730.02.e, as the same may be amended. If the substitute mitigation is not approved by the Department through a final order, the right holder shall not divert under this right."
  - c. "As a condition of the exercise of this right, the right holder shall submit the following information, by the following dates, to the Department and the

Coalition:

- i. By December 1<sup>st</sup> of each year, a written report describing the source of mitigation for this right for the following year's irrigation season.
    - ii. By April 15<sup>th</sup> of each year, a written report prepared by a qualified consultant describing the acres planned for irrigation during the current irrigation season.
    - iii. By August 15<sup>th</sup> of each year, a written report prepared by a qualified consultant verifying the acres actually irrigated during the current irrigation season."
  - d. "If the right holder fails to comply with any deadlines identified above, the right holder shall not be permitted to divert water under this water right at any time during the irrigation season.
  - e. "The Department shall 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. In order to offset the costs of the field exam, and as a condition of the exercise of this right, the right holder shall remit a fee of \$500.00 to the Department by April 15<sup>th</sup> of each year the right is anticipated to be exercised to reimburse the Department for staff time associated with the field examination."
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4. **Resolution of Protests.** This 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 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.

5. **Reservation of Rights.** The Parties agree and acknowledge that this 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 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.
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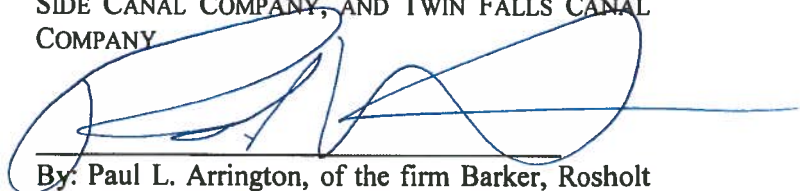
LANCE AND/OR LISA FUNK PARTNERSHIP



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

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

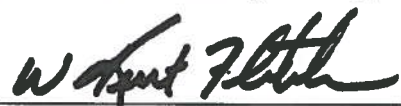
A&B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, AND TWIN FALLS CANAL COMPANY



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*

MINIDOKA IRRIGATION DISTRICT



By: W. Kent Fletcher, of the firm Fletcher Law Office

*Attorneys for Minidoka Irrigation District*

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