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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Monty and Carolene Funk

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

IN THE MATTER OF LICENSE NOS.
35-14236 (IN THE NAME OF MONTY
AND CAROLENE FUNK) AND 35-
14235 AND 35-8335 (IN THE NAME
OF LANCE D. FUNK AND LISA
FUNK)

REQUEST FOR HEARING

MONTY AND CAROLENE FUNK (hereinafter "M. Funk") and LANCE D. FUNK AND LISA FUNK, (hereinafter collectively "L. Funk") (M. Funk and L. Funk are collectively referred to herein as "Funk"), by and through their attorneys of record, Holden, Kidwell, Hahn & Crapo, PLLC, pursuant to Idaho Code § 42-1701A(3) and IDAPA 37.01.01.730.02.e, requests a hearing regarding the above-entitled licenses.

Specifically, Funk requests a hearing regarding the recent *Final Order Adding Clarifying Language to Assist the Department in Administration of Water Rights Entitled to Qualified Subordination* issued on the above licenses on December 14, 2012 (the "Final Order"). The *Final Order* added a qualified subordination condition to the above licenses because the Idaho Department of Water Resources did not have any evidence that the holders of the water right licenses had put the licenses to beneficial use prior to October 25, 1984, or that there was "substantial investment" made to develop the licenses prior to that date, and that an application

or claim for that use was not filed by June 30, 1985. See *Final Order* at FF Nos. 11-14 and CL No. 3.

License Nos. 35-14235 (owned by L. Funk) and 35-14236 (owned by M. Funk) are the progeny of a parent water right license numbered as 35-7838. Both M. Funk and L. Funk were not the listed owners of these licenses when the State of Idaho sent notice to the water right owner to file objections in the SRBA as described in the Director's December 14, 2012 letter which accompanied the *Final Order*. Furthermore, even if they had received notice of their need to file an objection in the SRBA, neither 35-14235 nor 35-14236 were required to file SRBA claims pursuant to Idaho Code § 42-1420(d) because proof of beneficial use for these licenses was not due until after the commencement date of the SRBA.

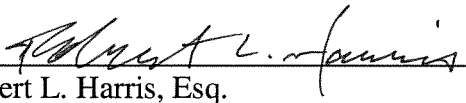
Additionally, M. Funk and L. Funk were not the titled owners of the licenses when they were developed. Because the *Final Order* was issued just before the holiday season, neither M. Funk nor L. Funk has been able to contact the prior owners of the licenses to determine what development occurred under 35-7838 prior to October 25, 1984. A cursory review of the water right backfile for 35-7838 suggests that some development of the land to be irrigated did occur before October 25, 1984, although it does appear that the well drilled to develop this water right was not drilled until the end of 1992 into the beginning of 1993. There also appears to be some indication by the permit holders that development did not occur due to the uncertainty of the implementation of the Swan Falls Agreement and the lawsuit filed by the Idaho Power Company which precipitated the Swan Falls Agreement. This fact may not have been available to the Director prior to issuance of the *Final Order*. Because both License Nos. 35-14235 (owned by L. Funk) and 35-14236 (owned by M. Funk) are from the same parent water license (35-7838), in the interests of judicial economy, it is requested that both licenses be addressed at the same hearing.

As to License No. 35-8335, L. Funk requests that this license be grouped with the 35-7838 licenses (35-14235 and 35-14236) to conserve both client and IDWR resources, as the issues will be similar for these licenses. A cursory review of the water right backfile for 35-8335 suggests that some development of the land may have occurred before October 25, 1984, although it does not appear to be extensive. However, there also appears to be some indication by the permit holders that development did not occur due to the uncertainty of the implementation of the Swan Falls Agreement and the lawsuit filed by the Idaho Power Company

which precipitated the Swan Falls Agreement. This fact may not have been available to the Director prior to issuance of the *Final Order*.

As to these licenses, it is requested that IDWR take no action on setting a hearing date until January 31, 2013 for the reasons that it may be determined, after further investigation and visitation with the original license owners by Funk, that substantial development of the licenses did not occur. In the interests of avoiding use of unnecessary IDWR resources, Funk requests that IDWR take no action until that date as it is possible that this request for hearing may be withdrawn.

DATED this 27th day of December, 2012.


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

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the parties listed below by hand delivery, email, mail, or by facsimile, with the correct postage thereon, on this 27th day of December, 2012.

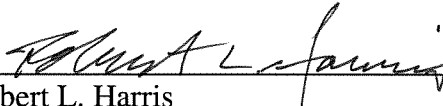
DOCUMENT SERVED: REQUEST FOR HEARING

ORIGINAL TO: Gary Spackman
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