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Department of Water Resources
Eastern Region

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DEPT. OF WATER RESOURCES
SOUTHERN REGION

*Attorneys for A&B Irrigation District, Burley Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls Canal Company*

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 25-14379)
(in the name of M&B Investments, LLC)
)
)
_____)

NOTICE OF JOINT PROTEST

A&B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, and TWIN FALLS CANAL COMPANY (hereinafter "Protestants"), by and through their attorneys of record, BARKER ROSHOLT & SIMPSON LLP, hereby file this *Notice of Joint Protest* to the approval of the above-numbered application for permit filed by the M&B INVESTMENTS, LLC ("Applicant"). The initial bases for the protests are as follows:

1. The Application violates the terms of the *Stipulation to Resolve Protests*, dated April 5, 2005, submitted to resolve protests to application for permit 25-14163 (copy attached).

2. The Application violates the conditions on Permit No. 25-14163, which requires that all irrigation within this place of use be accomplished using surface water shares from the Rigby Canal and Irrigation Company, Inc.

3. The Applicant has failed to provide sufficient evidence to demonstrate that the application is exempt from the *Amended Moratorium Order, In the Matter of Applications for Permit for the Diversion and Use of Surface and Ground Water within the Eastern Snake River*

Receipt 10027879

Plain Area and Boise River Drainage Area (April 30, 1993) ("Moratorium Order") and has not provided a mitigation plan in the alternative; and

4. The application violates the criteria of I.C. § 42-203A(5); and
5. For such other and further reasons as may be discovered or set forth at the hearing on this matter.

DATED this 24th day of September, 2012.

BARKER RSHOLT & SIMPSON LLP



PAUL L. ARRINGTON

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls Canal
Company*

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September, 2012, I served a true and correct copy of the foregoing *Notice of Joint Protest*, by depositing same in the United States mail, postage prepaid, addressed to the following:

M&B Investments, LLC
1645 Woodruff Park
Idaho Falls, ID 83401

Keith Wilson
Rocky Mountain Environmental Associates, Inc.
482 Constitution Way, Ste. 303
Idaho Falls, ID 83402



Paul L. Arrington

#25- received by dm 9/24/2012. # 5032809

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Dean Mortimer
Jesse Byrum
c/o M&B Investments LLC
665 S. Woodruff Ave.
Idaho Falls, Idaho 83401
Telephone: (208) 745-7722
Facsimile: (208) 745-0627

Attorneys for Twin Falls Canal Company and
North Side Canal Company

Applicant

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BEFORE THE DEPARTMENT OF WATER RESOURCES Department of Water Resources
Eastern Region

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 25-14163)
(in the name of M&B Investments LLC))

STIPULATION TO RESOLVE
PROTEST

_____)
TWIN FALLS CANAL COMPANY and NORTH SIDE CANAL COMPANY
(hereinafter "Canal Companies"), by and through their attorneys of record, BARKER
ROSHOLT & SIMPSON LLP, and M&B Investments LLC ("Applicant"), by and through its
members, Jesse Byrum and Dean Mortimer, hereby jointly file this *Stipulation to Resolve Protest*
in the above captioned matter. The reasons for this stipulation are set forth as follows:

The Applicant filed application for permit no. 25-14163 on December 9, 2004. The
Applicant originally applied for a diversion of 0.72 cfs of groundwater for domestic purposes for
approximately thirty nine (39) homes in Jefferson County, Idaho. The application, as originally
filed, sought a diversion of groundwater from the Eastern Snake Plain Aquifer ("ESPA") for a
consumptive use, including for irrigation of landscaping, lawns, and relevant common areas
within the development. Accordingly, the Canal Companies protested the application on

February 7, 2005, for various reasons, including the Applicant's failure to mitigate for the depletion to the ESPA, and resulting impact on the Snake River.

The Applicant and the Canal Companies have resolved the protest on the basis that the Applicant no longer seeks the diversion rate and volume associated with the primary irrigation of landscaping, lawns, and common areas (0.42 cfs).¹ Instead, the Applicant now only seeks 0.30 cfs for "in house" domestic use only for each unit within the development.² The Applicant currently owns 67.4 shares of stock in the Rigby Canal & Irrigating Company, Inc. for irrigation purposes on the development site, approximately 20 acres. Each share of stock represents 1 miner's inch of water for a total of 67.4 miner's inches (1.35 cfs). The Applicant proposes to use the appurtenant surface water rights in a separate irrigation system to serve the Sunbrook Estates subdivision. The Rigby Canal & Irrigating Company, Inc. consents to the Applicant's proposed irrigation system.

The Canal Companies and the Applicant hereby agree that the following conditions shall be included on the application for permit (and license) in order to resolve the Canal Companies' outstanding protest:

1. Domestic use is for the "in-house" use at a 39 home subdivision (Sunbrook Estates) and does not include lawn, garden, landscape, or other types of irrigation.
2. Irrigation water for lawns, gardens, landscaping, and common areas is provided by a separate surface water system with appurtenant canal shares of the Rigby Canal & Irrigating Company, Inc. (stock certificate no. 606, issued on 10/15/2003).
3. The Applicant shall provide copies of "as-built" drawings or design maps of the surface water irrigation system to the Department to maintain with the water right file.

¹ By resolution of this protest the Canal Companies do not concede or waive any arguments with respect to the basis for their protest should they be used in future protests against new applications for permit.

² The Canal Companies acknowledge that each residence may have one or more outside spigots that are used for incidental irrigation of landscaping, gardens, or other areas. However, the primary irrigation use for each residence will be provided by the surface water rights represented by the development's canal shares.

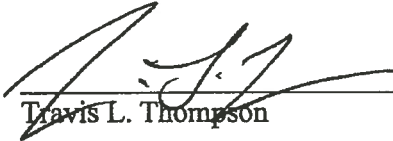
4. Prior to the diversion and use of water under this right, the right holder shall install and maintain an acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion and in accordance with Department specifications.

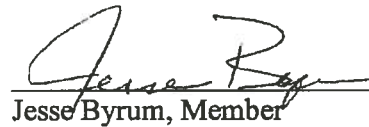
The Applicant and the Canal Companies specifically request the inclusion of the above conditions on the water right permit and license. If IDWR includes the conditions on the Applicant's water right, and the water right permit is approved for 0.30 cfs, then it may consider this stipulation as a withdrawal of the Canal Companies' protest.

DATED this 31 day of March 2005.

BARKER ROSHOLT & SIMPSON LLP

M&B INVESTMENTS LLC

 4/4/05
Travis L. Thompson


Jesse Byrum, Member

Attorneys for Twin Falls Canal Company and
North Side Canal Company


Dean Mortimer, Member

Applicant

CERTIFICATE OF SERVICE

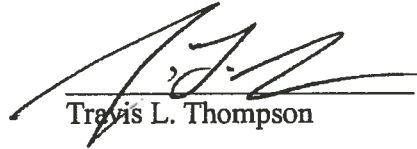
I hereby certify that on this 4th day of ~~March~~ ^{April}, 2005, I served a true and correct copy of the foregoing *Stipulation to Resolve Protest*, by depositing same in the United States mail, postage prepaid, addressed to the following:

Original:

IDWR
Eastern Regional Office
900 N. Skyline Dr., Suite A
Idaho Falls, Idaho 83402-1718

Copy:

M&B Investments LLC
665 S. Woodruff Ave.
Idaho Falls, Idaho 83401


Travis L. Thompson