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Department of Water Resources
Eastern Region

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APR 23 2012

DEPT. OF WATER RESOURCES
SOUTHERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 35-14240, 35-14241,)
35-14242, 35-14243, and 35-14244)
(in the name of Lance and/or Lisa Funk)
Partnership))
)
)
)

NOTICE OF JOINT PROTEST

A&B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL
COMPANY, and TWIN FALLS CANAL COMPANY (hereinafter "Protestants"), by and
through their attorneys of record, BARKER ROSHOLT & SIMPSON LLP and FLETCHER
LAW OFFICE, hereby file this *Notice of Joint Protest* to the approval of the above-numbered
applications for permit filed by the LANCE AND/OR LISA FUNK PARTNERSHIP
("Applicant"). The initial bases for the protests are as follows:

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

2. The Eastern Snake Plain Aquifer (ESPA) and the Snake River are overappropriated, hence the Department is without authority to issue new consumptive use water rights such as the irrigation use sought by the Applicant. Any additional consumptive use water rights that are appropriated, without mitigation, will further deplete the water supply in the ESPA and Snake River, and will injure existing water rights, including those held by the Protestants; and

3. The application will deplete ground water levels in the ESPA and injure the rights of existing ground water right holders, including A&B Irrigation District.

4. The application fails to identify the mitigation required to be provided for use of water rights 35-14014 and 35-14015 as agreed to be provided by Food Machinery and Chemical Corporation pursuant to its February 2, 1960 contract with the U.S. Bureau of Reclamation (Contract No. 14-06-100-1836) (assumed by assignment to the Idaho Water Resource Board).

5. The application is an unlawful attempt to avoid the requirements imposed by Idaho law pursuant to Idaho Code § 42-222. The new applications’ proposed diversion rates and consumptive use exceeds the historical use under water rights 35-14014 and 35-14015.

6. A water right permit without permanent mitigation is “insufficient” for purposes of irrigation and therefore violates I.C. 42-203A(5)(b); and

7. The application violates the criteria of I.C. § 42-203A(5); and

8. For such other and further reasons as may be discovered or set forth at the hearing on this matter.

DATED this 27th day of April 2012.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

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

FLETCHER LAW OFFICE



W. Kent Fletcher

Attorneys for Minidoka Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 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:

Lance and/or Lisa Funk Partnership
2960 Cedar Ln.
American Falls, Idaho 83211



Travis L. Thompson