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DEC 28 2010

Department of Water Resources
Eastern Region

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 35-14013
(in the name of Chris Blake)

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 76296
(in the name of Idaho Water Co. LLC)

**STIPULATION FOR
WITHDRAWAL OF PROTESTS**

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS (the "Stipulation") is made and entered into as of the 12th day of December, 2010, by and between Chris Blake (hereinafter, "Blake"), Idaho Water Co. LLC (hereinafter, "IWC"), and the A&B Irrigation District, Burley Irrigation District, Twin Falls Canal Company, North Side Canal Company, and Milner Irrigation District (hereinafter, the "Protestants"). Blake, IWC, and the Protestants are hereinafter collectively referred to as the "Parties."

RECITALS:

- A. Application for Permit No. 35-14013 and Transfer No. 76296 are related water right filings that seek authorization from the Idaho Department of Water Resources ("IDWR") for use of ground water for a pond to be constructed and owned by Blake. The pond has a storage capacity of 17.6 AF.

- B. On March 8, 2010, after Application for Permit No. 35-14013 and Application for Transfer No. 76296 were advertised pursuant to Idaho law, both applications were protested by the Protestants on numerous grounds.
- C. Blake is the listed applicant for Application for Permit No. 35-14013, which seeks authorization to develop a water right allowing for the non-consumptive recreational storage of ground water in the amount of 17.6 AFA in the recreational pond.
- D. Application for Permit No. 35-14013 does not seek authorization for the diversion of ground water for the initial fill or subsequent refill of the recreational pond. Rather, Blake will rent ground water from the State of Idaho Water Supply Bank as authorization for the initial fill of the recreational pond and any subsequent refills of the recreational pond if such pond is drained or partially drained for maintenance or other purposes.
- E. The listed application for Application for Transfer No. 76296 is IWC, and the water right that is proposed to be changed is Water Right No. 35-2241A.
- F. IWC is the owner of Water Right No. 35-2241A, which is presently authorized to divert 4.15 cfs and 1104 AFA for the irrigation of 276 acres. Blake is under contract to purchase a portion of Water Right No. 35-2241A from IWC. The portion Blake is under contract to purchase consists of .09 cfs and 5.8 acres of Water Right No. 35-2241A, and is hereinafter referred to as "Water Right No. 35-_____", as the Parties recognize that the IDWR will assign a new water right number for the portion of Water Right No. 35-2241A split to Blake. It is anticipated that upon approval of Application for Transfer No. 76296, IWC and Blake will close their purchase and sale of water rights, and Blake will become the titled owner of Water Right No. 35-_____.
- G. As indicated on Application for Transfer No. 76296, .05 cfs out of the .09 cfs total of Water Right No. 35-_____ is to be used for irrigation purposes in areas around the pond. The remaining .04 cfs will be used for diversion to storage purposes, with the volume of such diversion to storage diversions to equal 6.6 AF. This portion of Water Right No. 35-_____ will be used to replace evaporative losses from the recreational pond suffered throughout the year. Pursuant to the transfer, 5.8 acres will be dried up and no longer irrigated at the current place of use under Water Right 35-2241A.

- H. Representatives of Blake and the Protestants have discussed the applications and protests further, and in lieu of participating in administrative hearings provided for under Idaho law, hereby agree to resolve the protests as as set forth below.

AGREEMENTS:

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **PERMIT NO. 35-14013:**

- a. The Protestants hereby withdraw their protest to Application for Permit No. 35-14013, subject to the inclusion of the following conditions, by IDWR in the conditions of approval for Permit No. 35-14103:
 - i. “The authorized place of use for this right is a recreational pond located in SW1/4SW1/4 of Township 1S, Range 37E, Section 6.”
 - ii. “This water right does not authorize the diversion of ground water for recreational storage, but only authorizes the storage of ground water diverted for such purposes pursuant to separate authorization. The diversion of ground water for the initial fill and subsequent refill of the recreational pond must be authorized pursuant to a water bank lease or other approval from the Idaho Department of Water Resources. The diversion of ground water to replace evaporative losses from the recreational pond is authorized under Water Right No. 35-_____.”

2. **APPLICATION FOR TRANSFER NO. 76296.**

- a. The Protestants hereby withdraw their protest to Application for Transfer No. 76296, subject to the inclusion of the following conditions, by IDWR in the conditions of approval for Application for Transfer No. 76296:
 - i. “The authorized place of use for this right is a recreational pond located in SW1/4SW1/4 of Township 1S, Range 37E, Section 6.”

- ii. “The diversion to storage and recreational storage portion of this water right only authorizes the diversion of ground water to replace evaporative losses from the recreational pond of up to 6.6 AF per year, and does not authorize diversion of ground water for the initial fill or subsequent refills of the recreational pond. The diversion of ground water for the initial fill and subsequent refill of the recreational pond must be authorized pursuant to a water bank lease or other approval from the Idaho Department of Water Resources.”
 - iii. “The irrigation portion of this water right authorizes the irrigation of 3.5 acres in the SW1/4SW1/4 of Township 1S, Range 37E, Section 6.”
3. **WITHDRAWAL OF PROTEST.** Provided IDWR includes the above conditions in any approvals, the Protestants hereby withdraw their protests. The Protestants understand that executing this Stipulation, they will waive their ability to otherwise challenge the issuance of Permit No. 35-14013 or approval of Transfer No. 76296 in an administrative hearing or otherwise.
4. **SUBJECT OF IDWR APPROVAL.** The Parties agree and acknowledge that this Stipulation must be approved by IDWR, and this Stipulation is of no force or effect if IDWR does not approve of the conditions set forth in Section 1 and 2 above. In the event IDWR does not approve the exact language of the conditions set forth in Sections 1 and 2 above, the Parties agree to work with IDWR to try and reach acceptable language to capture the substantive terms outlined above.
5. **RESERVATION OF RIGHTS.** The Parties agree and acknowledge that this Stipulation resolves the protests to the above-referenced applications only and that the Protestants reserve all rights to pursue protests to other applications for permit and/or transfer in the future, including any future applications filed by Blake or IWC. The Parties shall not use this Stipulation in any other administrative or judicial proceedings for any purpose.

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 Parties' officers, directors, shareholders, heirs, successors and assigns, and shall be specifically enforceable.
8. **WAIVER OR 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.

Split of 35-2241A

35-2241A /Parent /Transfer

-35-13557 /Withdrawn Transfer /Transfer

-35-13558 /Withdrawn Transfer /Transfer

35-14032 /Active /Transfer 4.10 cfs/273 ac

35-14069 /Pending Transfer /Transfer (Remainder)

4.01 cfs/267.2 ac Irrigation

35-14070 /Pending Transfer /Transfer (Chris Blake)

~~0.09 cfs/5.8 ac~~ **Change Nature of Use:**

0.05 cfs/3.5 acres Irrigation

0.04 cfs Diversion to Storage

6.6 ac-ft Storage

35-14033 /Parent /Renumbering

27-12215 /Active /Renumbering (D & C Properties Inc.)

- B. On March 8, 2010, after Application for Permit No. 35-14013 and Application for Transfer No. 76296 were advertised pursuant to Idaho law, both applications were protested by the Protestants on numerous grounds.
- C. Blake is the listed applicant for Application for Permit No. 35-14013, which seeks authorization to develop a water right allowing for the non-consumptive recreational storage of ground water in the amount of 17.6 AFA in the recreational pond.
- D. Application for Permit No. 35-14013 does not seek authorization for the diversion of ground water for the initial fill or subsequent refill of the recreational pond. Rather, Blake will rent ground water from the State of Idaho Water Supply Bank as authorization for the initial fill of the recreational pond and any subsequent refills of the recreational pond if such pond is drained or partially drained for maintenance or other purposes.
- E. The listed application for Application for Transfer No. 76296 is IWC, and the water right that is proposed to be changed is Water Right No. 35-2241A.
- F. IWC is the owner of Water Right No. 35-2241A, which is presently authorized to divert ^{4.10}~~4.15~~ cfs and ¹⁰⁹²~~1104~~ AFA for the irrigation of ²⁷³~~276~~ acres. Blake is under contract to purchase a portion of Water Right No. 35-2241A from IWC. The portion Blake is under contract to purchase consists of .09 cfs and 5.8 acres of Water Right No. 35-2241A, and is hereinafter referred to as "Water Right No. 35-14070," as the Parties recognize that the IDWR will assign a new water right number for the portion of Water Right No. 35-2241A split to Blake. It is anticipated that upon approval of Application for Transfer No. 76296, IWC and Blake will close their purchase and sale of water rights, and Blake will become the titled owner of Water Right No. 35-14070.
- G. As indicated on Application for Transfer No. 76296, .05 cfs out of the .09 cfs total of Water Right No. 35-14070 is to be used for irrigation purposes in areas around the pond. The remaining .04 cfs will be used for diversion to storage purposes, with the volume of such diversion to storage diversions to equal 6.6 AF. This portion of Water Right No. 35-14070 will be used to replace evaporative losses from the recreational pond suffered throughout the year. Pursuant to the transfer, 5.8 acres will be dried up and no longer irrigated at the current place of use under Water Right 35-2241A.

- H. Representatives of Blake and the Protestants have discussed the applications and protests further, and in lieu of participating in administrative hearings provided for under Idaho law, hereby agree to resolve the protests as as set forth below.

AGREEMENTS:

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **PERMIT NO. 35-14013:**

- a. The Protestants hereby withdraw their protest to Application for Permit No. 35-14013, subject to the inclusion of the following conditions, by IDWR in the conditions of approval for Permit No. 35-14103:
- i. "The authorized place of use for this right is a recreational pond located in SW1/4SW1/4 of Township 1S, Range 37E, Section 6."
 - ii. "This water right does not authorize the diversion of ground water for recreational storage, but only authorizes the storage of ground water diverted for such purposes pursuant to separate authorization. The diversion of ground water for the initial fill and subsequent refill of the recreational pond must be authorized pursuant to a water bank lease or other approval from the Idaho Department of Water Resources. The diversion of ground water to replace evaporative losses from the recreational pond is authorized under Water Right No. 35-14070."

2. **APPLICATION FOR TRANSFER NO. 76296.**

- a. The Protestants hereby withdraw their protest to Application for Transfer No. 76296, subject to the inclusion of the following conditions, by IDWR in the conditions of approval for Application for Transfer No. 76296:
- i. "The authorized place of use for this right is a recreational pond located in SW1/4SW1/4 of Township 1S, Range 37E, Section 6."



Chris Blake

IDAHO WATER COMPANY LLC

By: Delbert G. Kohtz
Its: Managing Member

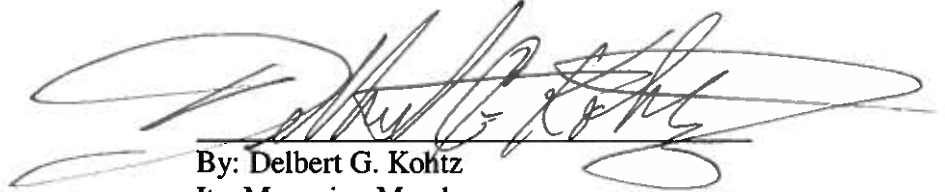
A&B IRRIGATION DISTRICT, BURLEY IRRIGATION
DISTRICT, TWIN FALLS CANAL COMPANY, NORTH
SIDE CANAL COMPANY, AND MILNER IRRIGATION
DISTRICT

By: Travis Thompson
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*

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Chris Blake

IDAHO WATER COMPANY LLC

A large, stylized handwritten signature in black ink, appearing to read 'Delbert G. Kohtz', is written over a horizontal line.

By: Delbert G. Kohtz
Its: Managing Member

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

By: Travis Thompson
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*

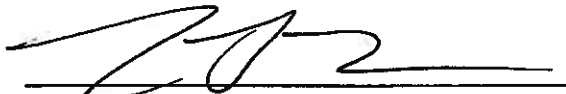
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Chris Blake

IDAHO WATER COMPANY LLC

By: Delbert G. Kohtz
Its: Managing Member

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



By: Travis Thompson
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*

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DEC 28 2010

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Eastern Region

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December 27, 2010

Idaho Department of Water Resources
ATTN: Sharla Cox
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RE: Stipulation for Withdrawal of Protests for Application for Permit No. 35-14013 and Application for Transfer No. 76296, in the Name of Chris Blake and Idaho Water Company, LLC.

Dear Sharla:

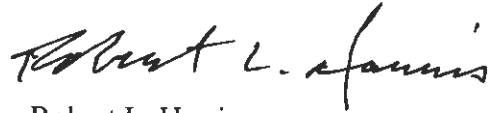
Enclosed for processing is a completely executed Stipulation for Withdrawal of Protest regarding the above referenced Application for Permit and Transfer. The Stipulation resolves concerns raised by the protestants in this matter, and provides that certain conditions will be included in the Application for Permit Approval and the Application for Transfer Approval. Please review those and let me know if there are any questions or concerns you have relative to those conditions. As stated in the Agreement, they are intended to clarify the intent of the application and transfer. To the extent they are significantly amended, it will likely be necessary for the parties to revisit the eventual proposed language. Therefore, please let me know if there will be substantial changes to the proposed language.

Additionally, we are enclosing a copy of a split analysis prepared by Keith Wilson of Rocky Mountain Environmental, as well as a redlined version of page 2 and 3 of the Stipulation. We understand that IDWR has recently assigned new numbers for various portions of these water rights. Rather than amend and re-execute the agreement, we simply are providing this to you to indicate that we are now aware that there has been a slight change in some of the water right numbers and amounts. However, it is critical to note that this does not change any portion of the agreement part of the stipulation, but only the recitals.

Additionally, I am copying Travis Thompson, the attorney for the protestants in this matter, so that he is aware of the now renumbered portions of these water rights.

If you have any questions or concerns, please let me know.

Best Regards,

A handwritten signature in black ink, appearing to read "Robert L. Harris". The signature is fluid and cursive, with the first name "Robert" being more prominent than the last name "Harris".

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

Enclosure

c: Travis Thompson