

Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518
Idaho State Bar Number 7018

RECEIVED
AUG 10 2003
Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 25-14199 IN THE NAME
OF MORNINGVIEW WATER COMPANY.

**STIPULATION FOR
WITHDRAWAL OF PROTEST**

THIS STIPULATION FOR WITHDRAWAL OF PROTEST (the "Stipulation") is made and entered into as of the 6th day of ~~July~~ ^{August}, 2009, by and between Morningview Water Company, Inc., an Idaho Corporation (hereinafter, "Morningview"), and the A&B Irrigation District, Burley Irrigation District, Twin Falls Canal Company, North Side Canal Company, and Milner Irrigation District (hereinafter, the "Protestants").

RECITALS:

- A. Morningview is the owner of Water Right No. 25-7593, a water right which authorizes the diversion of .46 cfs and 92.0 AFA for irrigation purposes, and .33 cfs and 28.8 for in-house non-consumptive uses. Water Right No. 25-7593 is authorized for use on 48 lots.
- B. On July 31, 2007, Morningview submitted Application for Permit No. 25-14199 to the Idaho Department of Water Resources, which sought the right to develop a new water right for 1.8 cfs for domestic purposes, which included up to ½ acre of irrigation per lot for 130 lots, a number of which are small 1/4-acre lots for mobile home trailers and ½-acre home lots.
- C. On September 24, 2007, after the application for permit was advertised pursuant to Idaho law, the application was protested by the Protestants on numerous grounds.

- D. After further discussion and investigation, it has been determined that Morningview Water Company services approximately 152 lots. The 152 lots are located in Divisions 1 through 4 of the Morningview Estates Subdivision and the entire Country Grove Estates Subdivision.
- E. After discussions between the parties to resolve the protest, Morningview and the Protestants agree as set forth below.

AGREEMENTS:

THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. **ISSUANCE OF PERMIT:** The parties agree that IDWR shall issue the permit for Water Right No. 25-14199, subject to the condition set forth in Section 2 below.
- 2. **STIPULATED CONDITION TO BE INCLUDED IN CONDITIONS FOR WATER RIGHT NO. 25-14199.** Water Right No. 25-14199 and Water Right No. 25-7593 shall be conditioned such that combined, both water rights shall be limited to the diversion of .83 cfs and for in-house non-consumptive purposes, and .46 cfs and 92 AFA for the irrigation of 152 lots. The Parties recognize that the 152 lot limitation is less than the combined 48 lots authorized under Water Right No. 25-7593 and the proposed 130 lots under Water Right No. 25-14199, but the 152 lot limitation is the entirety of the lots that will be serviced by Morningview and no additional lots shall be added or proposed. By way of illustration, the condition shall read substantially as follows, or shall be some variant of this condition as drafted by IDWR:

“This water right, when combined with the following water right, shall not exceed a total diversion rate of .83 cfs for in-house non-consumptive purposes, and .46 cfs and 92 AFA for the irrigation of the 152 lots.”

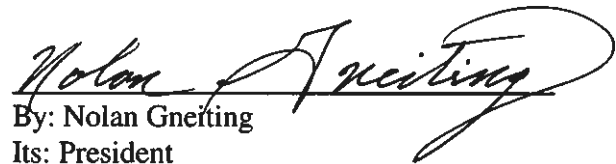
- 3. **WITHDRAWAL OF PROTEST.** Within ten (10) days of the execution of this Stipulation, the Protestants shall withdraw their protest to the Application for Permit No. 25-14199. The Protestants understand that by filing such withdrawal, they will waive their ability to

otherwise challenge the issuance of the permit in an administrative hearing or otherwise.

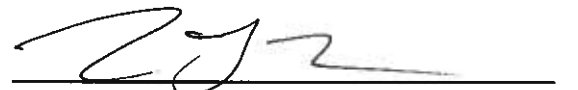
4. SUBJECT OF IDWR APPROVAL. The Parties agree and acknowledge that this Stipulation must be approved by IDWR, and this Stipulation is of no force or effect if IDWR does not approve of the condition set forth in Section 2.
5. RELIANCE UPON STATEMENTS / INTEGRATION AND MERGER: The parties hereto specifically 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 undo 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.
6. 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.
7. 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.
8. ENFORCEMENT: 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.
9. 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.

MORNINGVIEW WATER COMPANY, INC.


By: Nolan Gneiting
Its: President

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*

G:\WPDATA\RLH\9348-05 Gneiting, Nolan\Permit.Stipulation.FINAL.wpd