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Attorneys for Twin Falls Canal Company and
North Side Canal Company

RECEIVED
MAY 14 2008
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. 25-14198	)	
(in the name of BMT Investments)	)	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 BMT INVESTMENTS ("Applicant"), 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. 25-14198 on February 26, 2007. The
Applicant seeks to divert 0.85 cfs of groundwater for domestic purposes for approximately fifty-
two (52) homes in Bonneville County, Idaho. The application seeks 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. It is estimated the
consumptive use at the Sweet Country Estates development will be approximately 39 acre-feet

per year (13 acres multiplied by 3.0¹). The Canal Companies protested the application on July 23, 2007.

Counsel for the Applicant and the Canal Companies have resolved the protest by means of an acceptable mitigation plan to accompany the application.² The Applicant's proposed development site is within the boundaries of the Harrison Canal Company ("Harrison"). In addition, the land has been irrigated with surface water provided by Harrison. As a landowner within Harrison's boundary, the Applicant is entitled to receive 45 miner's inches of water (0.90 cfs) for use on its land. Since the Applicant proposes to use groundwater for irrigation purposes associated with the development, it also proposes to use the appurtenant surface water rights for mitigation recharge purposes. Harrison consents to the Applicant's proposed use. The Applicant proposes to utilize a nearby reclaimed gravel pit for recharge purposes. The soil and gravel composite of the pond makes it a suitable recharge facility. *See Mitigation Plan Filed with Application.* The diversion and use of the canal water for mitigation recharge of the ESPA in this particular location will offset the new consumptive use of groundwater for irrigation purposes in the nearby proposed development under the application. Given the unique details of this plan, the Canal Companies are agreeable to this approach in this circumstance.

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. The estimated consumptive use of 39 acre-feet per year under this water right, which represents an equivalent depletion to the Eastern Snake Plain Aquifer, is mitigated by the use of surface water recharge as detailed in the attached mitigation plan.

¹ According to the Applicant's mitigation plan, it is estimated that the irrigation of lawns, landscaping, and common area will consume approximately 3.0 acre-feet per acre on an annual basis.

² 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 Applicant is a landowner within the Harrison Canal Company and is entitled to receive approximately 0.90 cfs of surface water during the irrigation season for use in the SESE of Section 16, Township 3 North, Range 38 East, Bonneville County, Idaho (site of Sweet Country Estates subdivision).
3. The Applicant shall be responsible for providing an annual report to IDWR documenting the recorded diversions into and out of the on-site recharge pond facility. The monitoring and reporting requirements are necessary to ensure that 39 acre-feet per year is diverted and used for recharge purposes at the on-site pond facility. The reports shall be maintained with IDWR's water right file.
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. The referenced mitigation plan is attached to the application for permit. If IDWR includes the conditions on the Applicant's water right, then it may consider this stipulation as a withdrawal of the Canal Companies' protest.

DATED this 9th day of May 2008.

BARKER ROSHOLT & SIMPSON LLP

BMT INVESTEMENTS LLC


Travis L. Thompson


William K Brown

Attorneys for Twin Falls Canal Company and
North Side Canal Company

Member

CERTIFICATE OF SERVICE

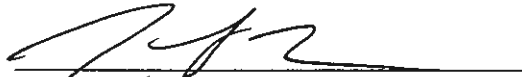
I hereby certify that on this 12th day of May 2008, I served a true and correct copy of the foregoing *Stipulation to Resolve Protest*, by depositing same in the United States mail, postage prepaid, addressed to the following:

Original:

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

Copy:

BMT Investments
P.O. Box 3093
Idaho Falls, Idaho 83403


Travis Thompson