

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
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JOHN A. BAILEY, JR.
JOHN R. GOODSELL
JOHN B. INGELSTROM
DANIEL C. GREEN**
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KIRK B. MADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC L. OLSEN
CONRAD J. AIKEN***
RICHARD A. HEARN, M.D.†
DAVID E. ALEXANDER††
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JOSHUA D. JOHNSON‡
JONATHAN S. BYINGTON
DAVE BAGLEY
CAROL TIFFI-VOLYN††
THOMAS J. BUDGE
CANDICE M. MCHUGH*****BOISE OFFICE**101 SOUTH CAPITOL
BOULEVARD, SUITE 208
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TELEPHONE: (208) 383-0011
FACSIMILE: (208) 433-0167**IDAHO FALLS OFFICE**477 SHOUF AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109*ALSO MEMBER WY & IL BARS
**ALSO MEMBER UT BAR
***ALSO MEMBER CO BAR
†ALSO MEMBER D. C. BAR
††ALSO MEMBER MO BAR
‡ALSO MEMBER IL BAR
‡‡ALSO MEMBER WA BAR**FACSIMILE TRANSMITTAL SHEET**

FAX NO.: 525-7177

DATE: June 1, 2007

TO: Lyle Swank

FROM: Thomas J. Budge

RE: Moody Creek/ Withdrawal of Protest
Our File No. 33637

7 Pages (including this one) are being transmitted. If you do not receive all of the pages, please contact our office immediately at the above telephone number. An original:

- ☐ will NOT follow.
☒ will follow by mail.
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COMMENTS: See attached letter and document.

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EXHIBIT "A"

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Received Time Jun. 1. 3:42PM

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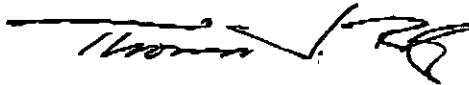
June 1, 2007

Via Facsimile 525-7177Lyle Swank, Eastern Region Manager
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402Re: Moody Creek
Our File No. 33637

Dear Lyle:

Please find enclosed herewith a copy of the Withdrawal of Protest submitted by the Friends
of Moody Creek in the matter of Application for Exchange in the name of DKJ Farms, LLC.

Sincerely,



THOMAS J. BUDGE

TJB/ltz
Enclosure

Thomas J. Budge
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Phone: 208-232-6101
Fax: 208-232-6109

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR EXCHANGE IN THE NAME) WITHDRAWAL OF PROTEST
OF DKJ FARMS, LLC)
_____)

Protestant FRIENDS OF MOODY CREEK hereby withdraws its protest in the above-referenced matter pursuant to the terms and conditions set forth in the Settlement Agreement attached hereto as Exhibit A.

DATED this 1st day of June, 2007.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By Thomas J. Budge
THOMAS J. BUDGE, Attorney for
Protestant Friends of Moody Creek

WITHDRAWAL OF PROTEST - 1

Received Time Jun. 1. 3:42PM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of June, 2007, the above and foregoing document was served on the following by U.S. Mail, postage prepaid:

Lyle Swank, Eastern Region Manager
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Friends of Moody Creek
James Wood
P.O. Box 610
Rexburg, Idaho 83440

George Brown
1439 Cambridge Drive
Idaho Falls, Idaho 83401

R. Scott Wood
2372 N. 8000 E.
Teton, Idaho 83451

Trent Wood
P.O. Box 174
Rexburg, ID 83440

Jerry Rigby
Rigby, Thatcher
P.O. Box 250
Rexburg, Idaho 83440

DKJ Farms LLC
665 Centennial Loop
Rexburg, Idaho 83440


THOMAS J. BUDGE

WITHDRAWAL OF PROTEST - 2

Received Time Jun. 1. 3:42PM

EXHIBIT "A"

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into this 1st day of June, 2007, by and between applicant DKJ FARMS, LLC, and protestant FRIENDS OF MOODY CREEK, in the matter of Application for Exchange in the Name of DKJ Farms presently before the Idaho Department of Water Resources.

RECITALS

WHEREAS, on February 22, 2007, DKJ Farms, LLC ("DKJ Farms") submitted to the Idaho Department of Water Resources ("IDWR") an Application for Exchange of Water (the "Exchange"); and

WHEREAS, on April 9, 2007, Friends of Moody Creek filed with IDWR a Notice of Protest pertaining to the Exchange; and

WHEREAS, Friends of Moody Creek agrees to withdraw its Protest upon the terms and conditions set forth herein; and

WHEREAS, DKJ Farms agrees to the terms and conditions set forth herein;

AGREEMENT

NOW, THEREFORE, with the foregoing recitals being incorporated herein and made a part hereof, and in consideration of the mutual covenants contained in this Agreement, it is hereby mutually agreed by and between DKJ Farms and Friends of Moody Creek as follows:

1. **Withdrawal of Protest.** Friends of Moody Creek agrees to withdraw its protest of the Exchange for the 2007 irrigation season upon the terms and conditions of this Agreement. In the event IDWR grants the Exchange for multiple irrigation seasons, DKJ Farms agrees that Friends of Moody Creek shall, in its sole discretion, be entitled to renew its protest of the Exchange for the 2008 irrigation season and subsequent irrigation seasons, which shall terminate the Exchange such that DKJ Farms shall be required to re-apply for another exchange of water if desired.

2. **Period of Use of Exchange Water.** DKJ Farms agrees that any right to divert water from Moody Creek pursuant to the Exchange shall be used for the irrigation of grain crops only, and that under no circumstances shall such water be diverted from Moody Creek after July 15.

3. **Long-Term Moody Creek Solution.** The parties agree to explore long-term solutions to the preservation of Moody Creek flows and to use good faith and fair dealing in implementing any such solutions which are mutually agreeable to the parties. In the event the parties are able to effectuate a transfer of Moody Creek water rights utilized by DKJ Farms from

SETTLEMENT AGREEMENT

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Moody Creek to a groundwater source, DKJ Farms agrees to pay additional pumping costs that may be incurred as a result of such transfer.

IN WITNESS WHEREOF, the parties have executed this Agreement the latest day and year indicated below.

**RIGBY, THATCHER, ANDRUS, RIGBY
KAM & MOELLER, CHARTERED**

By: 

JERRY RIGBY

Attorneys for DKJ Farms, LLC

**RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED**

By: 

THOMAS J. BUDGE

Attorneys for Friends of Moody Creek

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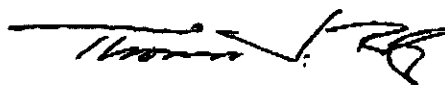
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THOMAS J. BUDGE

TJB/ltz
Enclosure

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Thomas J. Budge
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BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Phone: 208-232-6101
Fax: 208-232-6109

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR EXCHANGE IN THE NAME)
OF DKJ FARMS, LLC)
_____)

WITHDRAWAL OF PROTEST

Protestant FRIENDS OF MOODY CREEK hereby withdraws its protest in the above-referenced matter pursuant to the terms and conditions set forth in the Settlement Agreement attached hereto as Exhibit A.

DATED this 1st day of June, 2007.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By Thomas J. Budge
THOMAS J. BUDGE, Attorney for
Protestant Friends of Moody Creek

WITHDRAWAL OF PROTEST - 1

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900 N. Skyline Drive, Suite A
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P.O. Box 610
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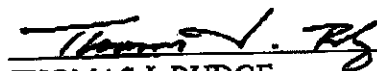
George Brown
1439 Cambridge Drive
Idaho Falls, Idaho 83401

R. Scott Wood
2372 N. 8000 E.
Teton, Idaho 83451

Trent Wood
P.O. Box 174
Rexburg, ID 83440

Jerry Rigby
Rigby, Thatcher
P.O. Box 250
Rexburg, Idaho 83440

DKJ Farms LLC
665 Centennial Loop
Rexburg, Idaho 83440


THOMAS J. BUDGE

WITHDRAWAL OF PROTEST - 2

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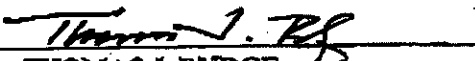
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KAM & MOELLER, CHARTERED**

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JERRY RIGBY
Attorneys for DKJ Farms, LLC

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Attorneys for Friends of Moody Creek