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RECEIVED  
FEB 07 2007  
Department of Water Resources  
Eastern Region

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION )  
FOR TRANSFER NO. 72385 )  
(in the name of City of Blackfoot) )  
)  
)

**NOTICE OF WITHDRAWAL OF  
PROTESTS**

A & B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2,  
BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, MINIDOKA  
IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, and TWIN FALLS CANAL  
COMPANY AND NORTHSIDE CANAL COMPANY (hereinafter "Surface Water Coalition"),  
by and through their respective attorneys of record, hereby file this *Notice of Withdrawal of*

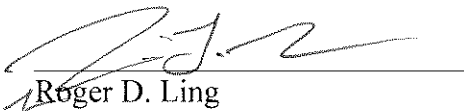
*Protests* to the approval of the above-numbered application for transfer filed by the City of Blackfoot ("Applicant"). This withdrawal is based upon the following:

1. The parties resolved the protests through a *Settlement Agreement* (attached hereto as Exhibit A).
2. The parties discussed the agreement and a draft approval of the transfer (attached hereto as Exhibit B) at a status conference held on September 20, 2006 and a teleconference held on December 28, 2006.
3. Provided the Department approves the transfer as set forth in the draft approval, the protests previously filed by the Coalition are hereby withdrawn. If, for any reason, the final approval of the transfer changes from the draft approval, the Coalition reserves all rights to protest the original application for transfer.

DATED this 6<sup>th</sup> day of February 2007.

LING ROBINSON & WALKER

ARKOOSH LAW OFFICES CHTD.

  
Roger D. Ling

Attorneys for A & B Irrigation District  
and Burley Irrigation District

  
L.C. Tom Arkoosh

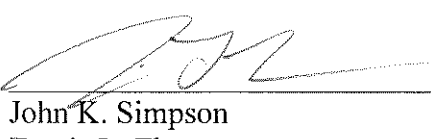
Attorneys for American Falls  
Reservoir District #2

FLETCHER LAW OFFICES

BARKER ROSHOLT & SIMPSON LLP

  
W. Kent Fletcher

Attorneys for Minidoka Irrigation District

  
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Paul L. Arrington

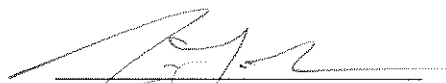
Attorneys for Milner Irrigation District,  
North Side Canal Company, and  
Twin Falls Canal Company

CERTIFICATE OF SERVICE

I hereby certify that on this 6<sup>th</sup> day of February, 2007, I served a true and correct copy of the foregoing *Notice of Withdrawal of Protests*, by depositing same in the United States mail, postage prepaid, addressed to the following:

Daniel Acevedo  
City Attorney  
City of Blackfoot  
157 N. Broadway  
Blackfoot, Idaho 83221

Jerry R. Rigby  
P.O. Box 250  
Rexburg, Idaho 83440-0250

  
Travis L. Thompson

# **EXHIBIT “A”**

**SETTLEMENT AGREEMENT**  
**IDWR Transfer of Water Right, Transfer No. 72385**

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this day of June, 2006, by and between the NEW SWEDEN IRRIGATION DISTRICT, an Idaho Irrigation District with its principal place of business located in Idaho Falls, Idaho ("NSID"); CITY OF BLACKFOOT, an Idaho municipality located in Blackfoot, Idaho ("CITY"); A & B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2; BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, TWIN FALLS CANAL COMPANY and NORTH SIDE CANAL COMPANY, ~~irrigation districts and canal companies with their principal places of business located throughout~~ southern Idaho (jointly "COALITION"); [The foregoing are sometimes referred to herein individually as a "Party" or collectively as the "Parties"].

**RECITALS:**

- A. Pursuant to an agreement by and between NSID and the CITY, NSID has assigned to the CITY all of its rights, title and interest in that certain IDWR water right, described as Water Right No. 1-181C ("Water Right"). The Water Right has been claimed by NSID in the Snake River Basin Adjudication as a valid natural flow water right.
- B. The intent of the CITY's acquisition of the Water Right is to change its point of diversion, place of use, and nature of use so as to be used in its gravel pit facility known as Jensen's Grove Pond ("Pond") and therefore filed an Application for Transfer of the Water Right with IDWR on or about October 27, 2005, which now carries the transfer number 72385 ("Transfer").
- C. On or about the 6<sup>th</sup> day of March, 2006 and pursuant to published notice as required by law, the COALITION filed a timely Notice of Joint Protest to the transfer application with IDWR.
- D. It is the Parties' understanding that IDWR is prepared to grant the proposed

Transfer providing: 1) the Parties are able to work out their differences in a manner which is consistent with IDWR transfer policies; 2) there is no injury to other water rights; 3) there is no expansion of the use under the original Water Right; and 4) the conditions agreed to below are incorporated in the Water Right through the transfer approval.

E. The Parties have met and have agreed upon certain conditions to be included in the Water Right after its transfer which would make the Transfer acceptable to the Parties, which will cause a withdrawal of the protest filed by the COALITION, and which Application, as modified by this Agreement, may be approved by IDWR.

**AGREEMENT:**

**NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED** by and between the Parties as follows:

**1. Conditions to Water Right after Transfer.**

The CITY and NSID agree that the following terms and conditions be included in the Water Right ("Conditions") after transfer:

- a. After approval of the pending Transfer, the CITY shall not, temporarily or permanently, thereafter transfer the Water Right, or any portion thereof, without receiving the written consent of the COALITION.
- b. Without the written consent of the COALITION, the CITY agrees to hold the Water Right in perpetuity for diversion of water from the Snake River into storage at the Pond, for irrigation and recreation purposes, and to not transfer the Water Right or change the nature of use or place of use of the Water Right.
- c. The Water Right shall, after its transfer to the CITY, allow water to be diverted only during the irrigation season (April 1<sup>st</sup> to October 31<sup>st</sup>) when water is available under the priority of the Water Right and the terms of this Agreement, and shall not allow year around diversion to storage as requested in the Application.
- d. Without the written consent of the COALITION, the CITY may not divert water into the Pond during the months of April and May if the conditions within the watershed of Water District 01 are such that pursuant to the rental pool procedures then in operation, the United States Government, acting through the Bureau of Reclamation ("BOR"), would not be

granted the opportunity to lease water from the local rental pool for flow augmentation below Milner Dam. Presently, the said right of the BOR is determined by a chart attached to the 2006 Rental Pool Procedures, entitled "Stipulated Augmentation Rental District 01" and is based upon certain storage carryover within reservoirs in Water District 01 and certain projected runoff as of April 1<sup>st</sup> of each year ("Date of Determination"). Even though the CITY's right to divert water under this right may not be triggered at the beginning of the irrigation season pursuant to the methodology described above, the CITY may nevertheless begin to divert water under the Water Right during the irrigation season should there be a change in circumstances and weather occurring after April 1<sup>st</sup> and before June 1<sup>st</sup> which would otherwise have granted the CITY the right to divert if said circumstances had existed at the original Date of Determination.

e. The CITY shall not lease, sell, transfer, grant, or assign to any other person or entity any right to recover groundwater or mitigation for the diversion of groundwater as a result of diversions under the Water Right including any incidental groundwater recharge that may occur as a result of such diversions. Furthermore, the CITY shall not request or receive any such mitigation credit on behalf of any other person or entity. If the CITY proposes to utilize the Water Right for groundwater recharge or mitigation purposes associated with existing or future groundwater rights, the CITY must file the appropriate application for permit and/or transfer.

**2. Administration of Water Right.**

For the purpose of administering the Water Right, except for the specific Conditions set forth in paragraph 1 above, water under the Water Right shall be distributed in its normal priority without any other restriction pursuant to Water District 01 procedures.

**3. Conditions and Transfer of Water Right.**

The Parties intend the above conditions to apply to this Water Right upon approval of the transfer. If IDWR consents to the terms and conditions of this Settlement by and between the Parties and agrees to approve the Transfer of the Water Right subject to the Conditions contained herein, then the COALITION hereby agrees to withdraw its protest. In the event IDWR does not approve the Transfer of the Water Right with the above Conditions, the Coalition reserves all rights to protest to the application.

**4. Partial Decrees.**

It is understood and agreed that any subsequent partial decree issued by the Snake River Basin Adjudication District Court should contain the terms and Conditions of this Agreement.

**5. Capacity to Execute Agreement.**

The Parties warrant and represent that the person executing this Agreement is empowered to do so on behalf of each district, city, company or entity and thereby binds such entity by signing this Agreement.

**6. Waivers.**

The failure to object to any breach of any term or condition in this Agreement shall not constitute a waiver and no failure to object shall be deemed a waiver of any prior to subsequent breach.

**7. Entirety of Agreement.**

This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and oral agreements. No promise or inducement has been offered or made except as herein set forth, and this Agreement is executed without reliance on any statement or representation by any other Party or their agent.

**8. Modification.**

This Agreement may amended or modified only by a written agreement signed by each of the Parties to this Agreement.

**9. Execution of Agreement in Parts.**

Due to time constraints and practicalities, the Parties acknowledge it is not possible to have all parties sign the same copy of this Agreement at the same time. Therefore, the Parties agree that this Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**10. Signatures.**

In witness whereof, the Parties to this Agreement through their duly-authorized representatives have executed this Agreement and certify that they have read, understood and agree to the terms and conditions of this Agreement as set forth herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year

first above written.

NEW SWEDEN IRRIGATION DISTRICT

By *Louis Hall*  
Its Chairman

CITY OF BLACKFOOT

By *Mike Urtue*  
Its Mayor

A & B IRRIGATION DISTRICT

By *Robert D. King*  
*attorney*

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AMERICAN FALLS RESERVOIR DISTRICT #2

By *Bob Atchuck*  
*Pres.*  
BURLEY IRRIGATION DISTRICT

By *Robert D. King*  
*attorney*  
*Pres.*

MILNER IRRIGATION DISTRICT

By *Scott S. Reedberg*  
Chairman

MINIDOKA IRRIGATION DISTRICT

*Mendota Irrigation District*

By *Mike Wilkin*

NORTH SIDE CANAL COMPANY

By *John M. Mohr, Pres.*

TWIN FALLS CANAL COMPANY

By *Don M. Murrain, Pres.*

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## **EXHIBIT “B”**

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
**TRANSFER OF WATER RIGHT**  
TRANSFER NO. 72385

This is to certify that: CITY OF BLACKFOOT  
157 N BROADWAY  
BLACKFOOT ID 83221  
(208)785-8688

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

**Summary of Water Rights Before the Proposed Change**

| <u>Right</u> | <u>Origin/Basis</u> | <u>Priority</u> | <u>Rate</u> | <u>Volume</u> | <u>Acre Limit</u> | <u>Total Acres</u> | <u>Source</u> |
|--------------|---------------------|-----------------|-------------|---------------|-------------------|--------------------|---------------|
| 1-181C       | AJC/Decreed         | 06/16/1900      | 46.00 cfs   | N/A           | N/A               | 616.7              | SNAKE RIVER   |

**Purpose of Transfer (Changes Proposed)**

| <u>Current Number</u> | <u>Split</u> | <u>POD</u> | <u>POU</u> | <u>Add POD</u> | <u>Period of Use</u> | <u>Nature of Use</u> |
|-----------------------|--------------|------------|------------|----------------|----------------------|----------------------|
| 1-181C                | NO           | YES        | YES        | YES            | YES                  | YES                  |

**Summary of Water Rights After the Approved Change**

| <u>Existing Right</u> | <u>New No. (changed portion)</u> | <u>Transfer Rate</u> | <u>Transfer Volume</u> | <u>Acre Limit</u> | <u>Total Acres</u> | <u>New No. (remaining portion)</u> | <u>Remaining Rate</u> | <u>Remaining Volume</u> | <u>Remaining Acre Limit</u> | <u>Remaining Total Acres</u> |
|-----------------------|----------------------------------|----------------------|------------------------|-------------------|--------------------|------------------------------------|-----------------------|-------------------------|-----------------------------|------------------------------|
| 1-181C                | <b>1-181C</b>                    | 46.00 cfs            | 2466.8 af              | N/A               | 50.0               |                                    | N/A                   | N/A                     | N/A                         | N/A                          |
| <b>COMBINED</b>       |                                  |                      |                        |                   |                    |                                    |                       |                         |                             |                              |
| <b>TOTALS</b>         |                                  | <b>46.00 cfs</b>     | <b>2466.8 af</b>       | <b>N/A</b>        | <b>50.0</b>        |                                    | <b>N/A</b>            | <b>N/A</b>              | <b>N/A</b>                  | <b>N/A</b>                   |

Detailed Water Right Description(s) attached

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Chief, Water Allocation Bureau

**Right Holder:** CITY OF BLACKFOOT  
157 N BROADWAY  
BLACKFOOT ID 83221

**Tributary:** COLUMBIA RIVER

SNAKE RIVER                  NESW                  Sec. 27 Twp 02S    Rge 35E   BINGHAM County

[illegible]

**WATER RIGHT NO. 1-181C**  
**As Modified by Transfer No. 72385**

**CONDITIONS OF APPROVAL**

1. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
2. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 01.
4. The right holder shall maintain a measuring device and lockable controlling works both of which shall be of a type approved by the Department and that will provide the watermaster suitable control of the diversion(s).
5. The reservoir established by the storage of water under this right shall not exceed a total capacity of 1100 acre feet or a total surface area of 73 acres. This right authorizes additional storage in the amount of 186 afa to make up losses from evaporation and 980.8 afa for seepage losses.
6. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
7. Water Right no. 1-181C no longer authorizes irrigation of 616.7 acres previously authorized under this right within New Sweden Irrigation District.
8. Approval of this transfer shall not preclude review of the ownership of water right no. 01-181C in the ongoing Snake River Basin Adjudication where New Sweden Irrigation District claims the right.
9. The diversion and use of water under this transfer is subject to additional conditions and limitations contained in a Settlement Agreement-IDWR Transfer of Water Right, Transfer No. 72385, dated June 2006, including any properly executed amendments thereto, entered into by and between the New Sweden Irrigation District, the City of Blackfoot, A & B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, Twin Falls Canal Company, and North Side Canal Company. The Settlement Agreement has been recorded in Bingham County (Instrument No. \_\_\_\_\_) and Bonneville County (Instrument No. \_\_\_\_\_) and is enforceable by the parties thereto.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Chief, Water Allocation Bureau