

Kent W. Foster, ISB # 1198
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
P.O. Box 50130
1000 Riverwalk Dr., Ste. 200
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

Attorneys for Applicants Comore Loma and
Comore Development, Inc.

John K. Simpson, ISB # 4242
Travis L. Thompson, ISB # 6168
Barker Rosholt & Simpson LLP
P.O. Box 485
113 Main Ave. West, Suite 303
Twin Falls, Idaho 83303-485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Protestants Twin Falls
Canal Company and North Side Canal
Company

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

IN THE MATTER OF APPLICATION FOR
PERMIT NOS. 25-14166 and 25-14167
(in the name of Comore Loma and Comore
Development, Inc.)

STIPULATION TO RESOLVE PROTESTS

COMORE LOMA and COMORE DEVELOPMENT, INC. (hereinafter collectively referred to as "Applicant"), by and through its attorneys of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., and Twin Falls Canal Company and North Side Canal Company (hereinafter "Canal Companies"), by and through their attorneys of record, Barker Rosholt and Simpson LLP, hereby jointly file this Stipulation to resolve the protests in the above captioned matters. The reasons for this Stipulation are set forth as follows:

Applicant filed application for permit number 25-14166 on March 25, 2005. The applicant seeks by such application to divert 2.6 CFS of ground water for domestic purposes for approximately two hundred (200) homes in Bonneville County, Idaho. Applicant also filed an application for permit number 25-14167 on April 12, 2005. Under this application applicant seeks to divert an additional 2.6 CFS of ground water for domestic purposes for an additional

RECEIVED
AUG 31 2005

Department of Water Resources
Eastern Region

two hundred (200) homes in Bonneville County, Idaho. Both applications seek a diversion of ground water from the Eastern Snake Plain Aquifer ("ESPA") for consumptive uses, including for irrigation or watering of landscaping, lawns, gardens, trees, shrubs, etc. It is estimated that the consumptive use at the developments when all four hundred (400) homes are constructed will be approximately five hundred twenty eight (528) acre feet per year (200 hundred acres multiplied by 2.64 acre-feet per acre per annum¹). The Canal Companies protested the first application on April 25, 2005, and the second application on May 9, 2005.

The Applicant and the Canal Companies have resolved the protest by means of an acceptable mitigation plan in connection with the above referenced applications. It is understood that Applicant shall acquire sufficient ground water rights which can be used for consumptive purposes, and to either retire those rights, change the nature of use of the rights to "mitigation" purposes, or transfer the rights so that all consumptive uses of water in connection with the proposed new subdivisions contemplated by the pending applications numbers 25-14166 and 25-14167 will be fully mitigated by such ground water rights. If the Applicant transfers the "mitigation" rights, it shall comply with and follow the Department's *Transfer Processing Policies & Procedures* Memorandum issued on October 30, 2002. The requirement to acquire the mitigation ground water rights shall be a condition on the water right permits (25-14166 & 25-14167). The formalities of the acquisition of such right or rights and the completion of any necessary transfer proceeding to accomplish any requisite changes in points of diversion, places of use, or other items will require additional time. Accordingly, Applicant shall proceed to acquire such rights within two (2) years from the effective date of this Stipulation. Applicant desires to proceed with the sale of lots and construction of homes thereon before such formalities can be complete, and must do so to protect the integrity of applicant's business.

¹It is estimated that the irrigation of lawns, gardens, trees and shrubs will consume approximately 2.64 acre-feet per acre on an annual basis assuming that landscaping consumptive use is equivalent to the alfalfa consumptive irrigation requirement at the Idaho Falls 2 ESE weather station as published in Allen and Brockway (1983).

In the interim, applicant has access to two hundred forty (240) shares of stock in Palisades Water Users, Inc. Applicant has been advised by Water District No. 1 officials that this particular block of stock is presently entitled to two hundred ten (210) acre feet of storage water which is physically present in Palisades Reservoir. The Water District 01 Water Master has agreed to deliver portions of such storage water, without transmission loss, to and into the water retention and recreation facility of the City of Blackfoot, Idaho, known as "Jensen's Grove", at such times and in such amounts as determined necessary by the Applicant and the Canal Companies to replace or offset any diversions of water from wells to be drilled pursuant to application numbers 25-14166 and 25-14167 for consumptive purposes in connection with the watering of lawns, trees, gardens, shrubs, etc. for homes as the same may be constructed within the contemplated subdivisions.² The storage water delivered to "Jensen's Grove", and any outflow, will be measured and monitored according to Watermaster requirements to demonstrate delivery and recharge in the facility. The consumptive irrigation requirement of such water is hereby agreed to be 2.64 acre-feet per acre, per annum, of such watered lots. The timing and amount of water to be delivered will be determined by a spreadsheet approved by the Applicant and Canal Companies and delivered to the Watermaster and IDWR as part of the mitigation plan for the two applications for permit. *See Exhibit A.* The Canal Companies do not agree and the Applicant acknowledges the disagreement regarding the use of Jensen's Gove as a suitable permanent recharge facility. However, for purposes of the interim period (two years) of the mitigation plan, the Canal Companies are willing to allow the Applicant to use the facility to offset depletions caused by the two ground water right permits. In the event Applicant does not acquire the "mitigation" water rights within the two-year period, and does not comply with that

² At the beginning of each irrigation season the Canal Companies and the Applicant, or their representatives, shall discuss when the storage water needs to be delivered to Jensen's Grove during that particular irrigation season.

condition of the water right permit, the Applicant agrees to cease all irrigation under the permits until the “mitigation” rights are acquired.

The City of Blackfoot has agreed to receive any such storage water so delivered in such amounts and at such times as determined by the process set forth above. The diversion and use of the storage water for mitigation recharge to the ESPA will offset any consumptive use of ground water for outside watering purposes under the referenced applications during the two-year interim period pending the contemplated acquisition of consumptive ground water rights and the completion of any required transfer proceeding therefore. To the extent outside watering needs for developed lots within the new subdivisions exceed available storage water, including any storage water held by the Applicant or acquired by the Applicant from the Water District No. 1 rental pool, in any irrigation season during the two-year interim period prior to the completion of acquisition of a permanent consumptive ground water rights and any required transfer proceeding, Applicant agrees not to divert ground water under permits which might be granted pursuant to applications numbers 25-14166 and 25-14167 for such purposes and accepts the full risk of any water shortages occasioned thereby.

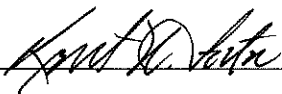
Applicant agrees to install and maintain acceptable measuring devices for each well constructed pursuant to applications numbers 25-14166 and 25-14167 and to provide such information or reports as may be required by the Water District No. 1 Watermaster for administration of the conditions of this Stipulation.

The Applicant and the Canal Companies specifically request the inclusion of the above provisions as conditions of the proposed water rights permits pending the completion of the contemplated acquisition of a permanent consumptive ground water right and any necessary transfer proceeding. If IDWR includes the conditions referenced herein in permits to be granted to Applicant under application numbers 25-14166 and 25-14167, then it may consider this

Stipulation as a withdrawal of the Canal Companies' protests.

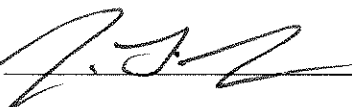
DATED this 30th day of August 2005.

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

By: 

Kent W. Foster
Attorneys for Comore Loma and Comore
Development Inc.

BARKER ROSHOLT & SIMPSON LLP

By:  8/29/05

Travis L. Thompson
Attorneys for Twin Falls Canal Company and
North Side Canal Company

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2005, I served a true and correct copy to the foregoing *Stipulation to Resolve Protest*, by depositing the same in the United States mail, postage prepaid, addressed to the following:

ATTORNEYS OR INDIVIDUALS SERVED:

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

Travis L. Thompson
Barker Rosholt & Simpson LLP
P.O. Box 485
Twin Falls, ID 83303-485



Kent W. Foster

EXHIBIT “A”

MITIGATION REQUIREMENT SPREADSHEET

Prepared by Chuck E. Brockway (consultant for Protestants)

For Applications for Permit No. 25-14166 & 25-14167

Comore Development (Proposed Development Schedule / Mitigation Volumes)

Comore proposes to develop 400 units for the complete project. Each unit is to irrigate 0.5 acres from a ground water source. Mitigation for consumptive irrigation requirement from the ground water source will take place in the interim period through infiltration of Snake River storage water at the Jensen's Grove pond near Blackfoot, Idaho.

Consumptive irrigation requirement is determined by assuming irrigated landscaping at each unit (CU) is equal to alfalfa CU at the Idaho Falls 2 ESE weather station as published in *Allen and Brockway* (1983)

CU for alfalfa 803 mm/year = 2.64 acre/feet/year
Irrigated acreage per unit 0.5 acres

<u>Year</u>	<u>No. Units/Year</u>	<u>Total Units</u>	<u>Acres Irrigated</u>	<u>CU af/year</u>
2005	0	0	0	0
2006	215	215	107.5	283.8
2007	30	245	122.5	323.4
2008	30	275	137.5	363.0
2009	33	308	154	406.6
2010	33	341	170.5	450.1

Recharge through Jensen's Grove pond should commence as soon as possible in the irrigation season to assure that benefits to the Near Blackfoot to Neeley reach-gain are realized during the present irrigation season.

Measurement and monitoring of inflow and outflow from the Jensen's Grove pond is required to assure that the specified volume is in fact recharged.