

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
BARKER ROSHOLT & SIMPSON LLP
113 Main Ave. West, Suite 303
Twin Falls, Idaho 83301-6167
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Twin Falls Canal Company and
North Side Canal Company

Frank Exler

dba Rolling Hills Development
P.O. Box 465
Rigby, Idaho 834442
Telephone: (208) 709-5147
Facsimile: (208) 745-0801

Applicant

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APR 06 2005

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. 35-13522)
(in the name of Frank Exler dba Rolling)
Hills Development))
_____)

**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 Frank Exler ("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. 35-13522 on December 1, 2004. The
Applicant seeks to divert 1.09 cfs of groundwater for domestic purposes for approximately
ninety-four (94) homes in Jefferson County, Idaho. The application, as originally filed, sought 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 Rolling Hills development will be

approximately 82.5 acre-feet per year (33 acres multiplied by 2.5¹). The Canal Companies protested the application on January 3, 2005, for various reasons, including the Applicant's failure to mitigate for the depletion to the ESPA, and resulting impact on the Snake River.

The Applicant and the Canal Companies have resolved the protest on the basis that the Applicant no longer seeks the diversion rate and volume associated with the primary irrigation of landscaping, lawns, and common areas (0.63 cfs).² Instead, the Applicant now only seeks 0.46 cfs for "in house" domestic use only for each unit within the development.³ The Applicant currently owns 3.3 shares of stock in the Butte & Market Lake Canal Company that are appurtenant to the 33 acres that will be developed into the Rolling Hills subdivision. Each share of stock represents 10 miner's inches of water for a total of 33 miner's inches (0.66 cfs). The Applicant proposes to use the appurtenant surface water rights in a separate pressurized irrigation system to serve the Rolling Hills subdivision. The Butte & Market Lake Canal Company consents to the Applicant's proposed irrigation system.

The Canal Companies and the Applicant hereby agree that the following conditions shall be included on the water right permit (and license) in order to resolve the Canal Companies' outstanding protest⁴:

1. Domestic use is for the "in-house" use at a 94 home subdivision (Rolling Hills subdivision) and does not include lawn, garden, landscape, or other types of irrigation.
2. Irrigation water for lawns, gardens, landscaping, and common areas is provided by a separate pressurized surface water system with appurtenant canal shares of

¹ It is estimated that the irrigation of lawns, landscaping, and common area will consume approximately 2.5 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.

³ The Canal Companies acknowledge that each residence may have one or more outside spigots that are used for incidental irrigation of landscaping, gardens, or other areas. However, the primary irrigation use for each residence will be provided by the surface water rights represented by the development's canal shares.

⁴ The Applicant recognizes that IDWR may include other conditions on the permit and license.

the Butte & Market Lake Canal Company (stock certificate no. 1137, issued on 8/5/90).

3. The Applicant shall provide copies of "as-built" drawings or design maps of the surface water irrigation system to the Department to maintain with the 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. If IDWR includes the conditions on the Applicant's water right, and the water right permit is approved for 0.46 cfs, then it may consider this stipulation as a withdrawal of the Canal Companies' protest.

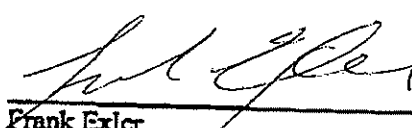
DATED this 5th day of April 2005.

BARKER ROSHOLT & SIMPSON LLP

ROLLING HILLS DEVELOPMENT

Travis L. Thompson

Attorneys for Twin Falls Canal Company and
North Side Canal Company



Frank Exler

Applicant

the Butte & Market Lake Canal Company (stock certificate no. ____, issued on ____/____/____).

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The Applicant and the Canal Companies specifically request the inclusion of the above conditions on the water right permit and license. If IDWR includes the conditions on the Applicant's water right, and the water right permit is approved for 0.46 cfs, then it may consider this stipulation as a withdrawal of the Canal Companies' protest.

DATED this SE day of April 2005.

BARKER ROSHOLT & SIMPSON LLP

ROLLING HILLS DEVELOPMENT


Travis L. Thompson

Frank Exler

Attorneys for Twin Falls Canal Company and
North Side Canal Company

Applicant

CERTIFICATE OF SERVICE

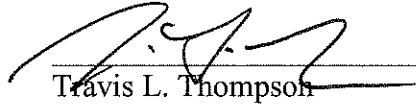
I hereby certify that on this 5th day of April, 2005, I served a true and correct copy of the foregoing *Stipulation to Resolve Protest*, by depositing same in the United States mail, postage prepaid, addressed to the following:

Original:

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

Copy:

Frank Exler
(dba Rolling Hills Development)
P.O. Box 465
Rigby, Idaho 83442


Travis L. Thompson