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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. 35-13521)
in the name of ANDREW POVEY)
_____) **CONDITIONAL WITHDRAWAL
OF PROTEST**

The U. S. DEPARTMENT OF INTERIOR, BUREAU OF RECLAMATION
(Reclamation) hereby files this *Conditional Withdrawal of Protest* to the above-numbered
application for permit filed by Andrew Povey ("Applicant"). The reasons for this conditional
withdrawal are set forth as follows:

Reclamation and the Applicant have discussed the application for permit, including the
proposed mitigation plan, and the reasons for Reclamation's protest. The Applicant has agreed
to the conditions proposed by Reclamation. Accordingly, Reclamation hereby withdraws its
previously filed protest subject to the following conditions being included in the Department's
approval of the application for permit:

- 1) To mitigate for the depletion of water resulting from the use of water under
this right and to prevent injury to senior water right holders, the right holder
shall cease diverting and using water as authorized by the following water
rights for the purposes and amounts specified below. Moreover, the official
record for the following water right(s) will be changed to show that diversion
and use of water is not authorized because the rights, or portion(s) thereof, are
being dedicated to mitigation purposes.

<i>Right No.</i>	<i>Use Changed to Mitigation</i>	<i>Mitigation Rate</i>	<i>Mitigation Volume</i>	<i>Acres</i>
35-2727A	Irrigation	1.99	383.2	170
35-7603C	Irrigation	0.87	296.8	
36-16212	Irrigation	0.11	20.8	16
36-16214	Irrigation	0.16	31.2	
36-16216	Irrigation	0.04	7.6	
36-16218	Irrigation	0.01	4.4	
43-13445	Irrigation	0.84	200	74
43-13347	Irrigation	0.15	96	

The land that will no longer be irrigated under these rights is located (insert legal descriptions for acres that will be dried up)

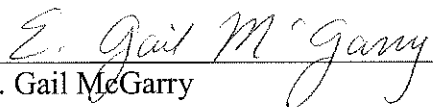
If the specified mitigation rights, or portions thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water or a priority call, or reduced through forfeiture or abandonment, then the amount of water authorized for diversion under this permit shall be reduced by the same proportion as the reduction to the mitigation rights.

- 2) 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 Water District No. 120. In addition, use of water under the mitigation rights 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, the mitigation rights are located within Water District No. 120 and Water District No. 130.
- 3) The right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
- 4) The watermasters of Water District Nos. 120 and 130 are instructed to obtain and report annual water diversions under both this right and the mitigation rights to assure compliance with the mitigation requirements of this water right. GIS .shp files for the place of use of each of the above mitigation rights will be obtained, reviewed, and retained in IDWR files for the rights.

Reclamation specifically requests that the above conditions be included on the Department's approval of the application for permit. Provided the Department includes the above conditions, Reclamation hereby agrees to withdraw its protest.

DATED this 7th day of February 2005.

BUREAU OF RECLAMATION


E. Gail McGarry

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2005, I served a true and correct copy of the foregoing *Conditional Withdrawal of Protest* on the following by the method indicated:

Via U.S. Mail:

Roger Warner
Eastern Region, IDWR
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