

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

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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**

TWIN FALLS CANAL COMPANY and NORTH SIDE CANAL COMPANY
(hereinafter collectively referred to as the "Canal Companies"), by and through their attorneys of
record, BARKER ROSHOLT & SIMPSON LLP, hereby file 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:

The Canal Companies' counsel and the Applicant have discussed the application for
permit, including the proposed mitigation plan, and the reasons for the Canal Companies'
protest. The Applicant has agreed to the conditions proposed by the Canal Companies.
Accordingly, the Canal Companies hereby withdraw their 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.

<u>Right No.</u>	<u>Use Changed to Mitigation</u>	<u>Mitigation Rate / Acres</u>
35-2727A	Irrigation	
35-7603C	Irrigation	
36-16212	Irrigation	
36-16214	Irrigation	
36-16218	Irrigation	
43-13445	Irrigation	
43-13347	Irrigation	

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

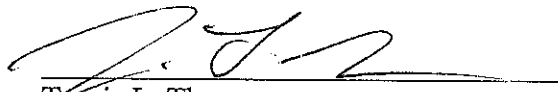
If the specified mitigation rights, or portions thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water or a priority call, or reduced through forfeiture or abandonment, then the amount of water authorized for diversion under this permit shall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

The Applicant is responsible for providing the mitigation diversion rates and the number of acres under the relevant water rights listed in Condition #1. The Canal Companies specifically request that the above conditions be included on the Department's approval of the application for permit. If the Department includes the above conditions, the Canal Companies hereby agree to withdraw their protest.

DATED this 3rd day of February 2005.

BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

Attorneys for Twin Falls Canal Company and
North Side Canal Company

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd 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 Facsimile & U.S. Mail:

Roger Warner
Eastern Region, IDWR
900 N. Skyline Dr., Suite A
Idaho Falls, Idaho 83402-1718
Facsimile: (208) 525-7177

Andrew Povey
2602 Povey Road
American Falls, Idaho 83211
Facsimile: (208) 226-2191

Matt Howard
United States Bureau of Reclamation
Pacific Northwest Regional Office
1150 North Curtis Road
Boise, Idaho 83706-1234
Facsimile: (208) 378-5305


Travis L. Thompson