

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

RECEIVED

OCT 18 2004

Department of Water Resources
Southern Region

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 45-7731 in the name of)
RONALD TURNER, LOVELL TURNER,)
and JOYE SIMPSON)
_____)

**CONDITIONAL WITHDRAWAL OF
PROTEST**

TWIN FALLS CANAL COMPANY and NORTH SIDE CANAL COMPANY
(hereinafter "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 transfer filed by Ronald Turner, Lovell Turner, and Joye Simpson
(collectively "Applicants"). The reasons for this conditional withdrawal are set forth as follows:

A pre-hearing conference regarding the above-referenced application was held on
September 27, 2004 at IDWR's Southern Regional office in Twin Falls, Idaho. At that
conference, the Applicants presented information to demonstrate that the diversion rate for water
right no. 45-07333 was mistakenly licensed for 0.55 cfs due to an apparent calculation error
when the beneficial use examination was conducted by IDWR in 1987. The licensed annual
volume rate of 267.3 acre-feet reflects this error. The Applicants also presented information to

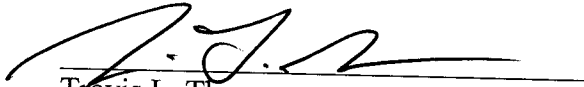
demonstrate their diversion works (pump capacity) have not changed since the original water right (no. 45-07333) was licensed; and also demonstrated that their annual diversions have not exceeded the licensed volume amount. Rather than proceed with a petition to amend the license for water right no. 45-07333, the Applicants indicated that they instead would like to pursue the above-referenced application for permit. Due to the unique facts and circumstances concerning the Applicants' original water right, the Canal Companies do not wish to continue with their protest to the above-referenced application for permit.

The Canal Companies hereby withdraw their previously filed protest to this application subject to the condition that IDWR's approval of the application conforms to the acre limitation and total volume limitation for water right nos. 45-07333A and 45-07333B, as ultimately partially decreed by the Snake River Basin Adjudication (SRBA) District Court. In addition, use of water under this permit in conjunction with water right no. 45-07333A and 45-07333B must be limited to a total instantaneous diversion rate of 1.73 cfs and a total annual diversion volume of 253.8 acre-feet. The Canal Companies specifically request a condition on the approval of the application for permit to that effect. The Canal Companies conditionally withdraw their protest based on the following: 1) the unique and specific facts related to the original licensing of water right 45-07333; 2) the information provided by the Applicants with regards to water right no. 45-07333; and 3) the lack of hydrologic impact associated with this application. The Canal Companies are satisfied that this particular application will not result in an increased consumptive use of water due to this water right's unique connection and relationship to water right 45-07333. The Canal Companies limit this acknowledgement to this application only and do not concede that any other applications for permit that seek an "irrigation" use are "non-consumptive."

By withdrawal of the protest in this matter, the Canal Companies do not concede nor do they waive any rights to protest other applications pending before IDWR, including any and all applications that may be impacted by the contested case proceeding entitled *In the Matter of Application for Permit No. 36-16125 in the name of Delis Farms, Inc.*

DATED this 18th day of October 2004.

BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

Attorneys for Twin Falls Canal Company and
North Side Canal Company

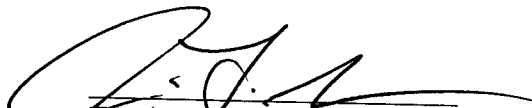
CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of October, 2004, I served a true and correct copy of the foregoing *Conditional Withdrawal of Protest*, by depositing same in the United States mail, postage prepaid, addressed to the following:

Ronald Turner
Joye Simpson
871 E 350 N
Declo, Idaho 83323

Lovell Turner
863 E 350 N
Declo, Idaho 83323

Gail McGarry
USDI – Bureau of Reclamation
1150 N. Curtis Rd., Suite 100
Boise, Idaho 83706


Travis L. Thompson