

Diversion Closure Agreement
(RHunt)

This Agreement is entered into this 10th day of July, 2002 by and between Ryan Hunt, the Idaho Department of Fish and Game and the Custer Soil and Water Conservation District.

RECITALS

- A. Whereas, the Landowner owns certain real property that is designated as tax assessor parcel RP14N19E357201 within Township 14 North, Range 19 East, Section 35, Boise Meridian in Custer County Idaho and within the Custer Soil and Water Conservation District boundaries, as depicted in Exhibit A, attached hereto and by this reference made a part hereof; and,
- B. Whereas, the Landowner irrigates a portion of the lands described in Exhibit A with water diverted from the Salmon River under the water right no. 72-04192B with a point of diversion located in Lot 9 section 35, Township 14 North, Range 19 East B.M. (the "Diversion") and with a place of use described in that certain partial decree in Twin Falls County Case No. 39576 dated February 12, 2002 (a true and correct copy of which is attached hereto as Exhibit B and incorporated herein) as 14 acres within Lot 6, section 35, Township 14 North, Range 19 East B.M. (the "Present Place of Use").
- C. Whereas, the CSWCD is a Soil and Water Conservation District organized and existing under and by virtue of the Soil Conservation District Law, Title 22, Chapter 27 of the Idaho Code. The CSWCD has the authority to enter into this Agreement in accordance with Idaho Code Section 22-2722. The IDFG through its fish and wildlife program, can enter into agreements for the purpose of enhancing habitat of fisheries indigenous to this area and also for water conservation; and,
- D. Whereas, CSWCD and IDFG jointly administer a program in Custer County for enhancing habitat of fisheries indigenous to this area and also for water conservation, and as part of such program and as part of such program, CSWCD and IDFG wish to establish the terms and conditions for the permanent closure and removal of the Diversion by Landowner and for the permanent cessation of irrigation of the Subject Property, and to establish the compensation to be paid to Landowner therefor.

IN CONSIDERATION OF THE PROMISES STATED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS

ARTICLE 1. DEFINITIONS

- a. The term "Agreement" means this Agreement along with the accompanying exhibits labeled "A" through "D."
- b. The term "CSWCD" means the Custer Soil and Water Conservation District, P.O. Box 305, 1258 Pleasant Ave, Challis, Idaho 83226.
- c. The term "IDFG" means the Idaho Department of Fish and Game, 600 S. Walnut St., Boise, Idaho 83707, by and through its authorized representatives.
- d. The term "Landowner" or "Landowners" means Ryan Hunt, a married man dealing with his sole and separate property, whose address is P.O. Box 719, Challis, Idaho 83226, and any successor in interest.

e. The term "Diversion" means the point of diversion of water from the Salmon river under right no. 72-04192B, as of the date of this Agreement, which point of diversion is located in Lot 9 section 35, Township 14 North, Range 19 East B.M.

f. The term "Subject Property" means the Present Place of Use as described in Recital B above.

ARTICLE 2. REMOVAL AND CLOSURE OF DIVERSION – CESSATION OF IRRIGATION

a. Removal and Permanent Closure. Landowner has caused or shall cause the removal and permanent closure of the Diversion, to be completed no later than thirty (30) days from the date of this Agreement. Upon completion of the removal and permanent closure of the Diversion, and thereafter the Subject Property shall no longer be irrigated.

b. Compliance with Applicable Law. Landowner shall comply with all applicable state, federal and local laws governing the construction necessary for the removal and permanent closure of the Diversion.

c. NA

d. Inspection and Confirmation. Landowner shall provide CSWCD/IDFG with before and after photographs documenting the removal and permanent closure of the Diversion.

ARTICLE 3. CONSERVATION EASEMENT

a. Grant of Easement. To ensure the permanent closure of the Diversion and the cessation of irrigation as set forth in Article 2. above, Landowner shall execute and deliver to CSWCD/IDFG a Conservation Easement in the form of Exhibit C hereto.

b. Priority of Conservation Easement and Title Insurance Contingency. The Conservation Easement shall be first in time and right as against all claims and encumbrances on the Subject Property. The obligation of CSWCD/IDFG to pay any of the sums set forth in this agreement is conditioned upon the ability of CSWCD/IDFG to acquire a policy of title insurance insuring the Conservation Easement as prior in time and right to all other claims, and containing only those exceptions numbered 1- 10, 14 & 15 set forth in the Commitment for Title Insurance, a true and correct copy of which is attached hereto as Exhibit D, and incorporated herein. Landowner shall have the obligation to acquire necessary subordinations or releases from existing mortgage holders or other claimants against the property, as well as the consent of Landowner's spouse.

ARTICLE 4. PAYMENT BY CSWCD/IDFG

a. Payment by CSWCD/IDFG, Generally. Under the terms and conditions set forth below, and upon completion of the permanent closure of the Diversion and verification thereof by CSWCD/IDFG, and upon the execution and delivery of the Conservation Easement, CSWCD/IDFG will pay the sum of \$30,000.00 to, or for the benefit of, Landowner as full compensation for the Conservation Easement.

b. Payment of Invoices. Landowner shall be responsible for payment to any contractors for the cost of closure.

c. NA.

ARTICLE 5. INSPECTIONS

Landowner shall allow CSWCD/IDFG or their agents to inspect the Subject Property for a period of 20 years from the date of this agreement to insure the diversion remains closed and the Subject Property remains un-irrigated. The inspections authorized under this subdivision shall be on-the-ground inspections and shall be limited to no more than two per calendar year. The CSWCD/IDFG will schedule the inspections with the Landowner as described in the Conservation Easement attached as Exhibit C. The Landowner may accompany the above parties during the on-the-ground inspections. The foregoing does not address the procedures for, or the limits applicable to, visual inspections from a boat or from the air. No limitations apply to such inspections.

ARTICLE 6. INDEMNIFICATION

Landowner, shall indemnify and hold harmless the CSWCD/IDFG and it's representatives against and from any and all demands, claims and liabilities of every nature whatsoever arising directly and indirectly from or in any way connected with Landowner's performance under this Agreement.

ARTICLE 7. TRANSFER OF POINT OF DIVERSION

a. Application to Transfer. The parties hereto acknowledge that Landowner may apply for the transfer of the point of diversion for water right no. 72-04192B through the procedures established by the State of Idaho, Department of Water Resources, provided however, approval or rejection of this application is in not any way connected to this Agreement nor does it change the terms of the Agreement.

b. No Intent to Abandon Water Right. The parties hereto acknowledge that Neither the terms of this Agreement nor performance of any of the actions contemplated hereunder shall be construed as evidence of intent to abandon or forfeit any portion of water right no. 72-04192B.

ARTICLE 8. TERMINATION OF AGREEMENT – REMEDIES UPON BREACH

a. Termination for Convenience. This agreement may be terminated by either party, prior to commencement of removal of the Diversion upon written notice to the other party.

b. Breach. In the event Landowner fails to complete removal of the Diversion, or fails to comply with any other term, covenant or condition hereof applicable to Landowner, CSWCD/IDFG shall have the following rights, cumulatively:

1. The right to terminate this agreement after notice to Landowner of the basis for such termination and the failure of Landowner to cure the same within thirty (30) days of mailing of such notice, and upon such termination, CSWCD/IDFG shall have no further responsibility under this agreement;
2. The right to specifically enforce the terms, covenants and conditions hereof applicable to Landlord in a court of competent jurisdiction in the State of Idaho.
3. Such other remedies as are available at law or in equity.

ARTICLE 9. GENERAL PROVISIONS

a. Entire Agreement. This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.

b. No Third Party Beneficiaries. This Agreement is not intended for the benefit of any third party and is not enforceable by any third party.

c. Severability. If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid or otherwise unenforceable, all remaining provisions of this Agreement shall remain in full force and effect.

d. Applicable Law. All parties agree that this Agreement shall be governed by, and construed in accordance with, the laws of the State of Idaho.

e. Jurisdiction. All parties agree that any the courts of the State of Idaho have jurisdiction to interpret and enforce the provisions of this Agreement.

f. Effective Date. This Agreement shall take effect on the date of the last signature subscribed to the Agreement. The term of the Conservation Easement is perpetual.

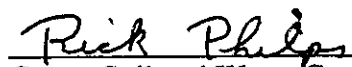
g. Section Headings. The section headings appearing in this Agreement are not to be construed as interpretations of the text but are inserted for convenience and reference only.

h. Counterparts. Multiple counterparts of this agreement may be executed by the parties and each such counterpart shall be deemed an "original" for all purposes.



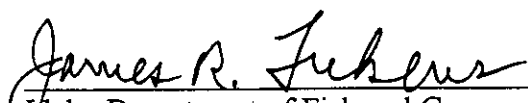
Ryan Hunt

Date: 7-10-02



Custer Soil and Water Conservation District
Chairman

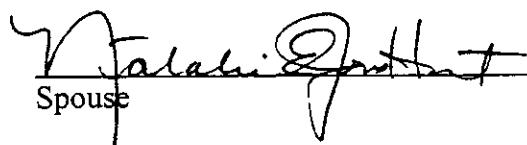
Date: 7-15-02



Idaho Department of Fish and Game

Date: 7-16-02

Spousal Consent: The undersigned spouse of Ryan Hunt hereby consents to the above agreement with respect to any claim the undersigned may have to the subject real property.



Spouse

Date: 10 July 2002

Exhibit A to Diversion Closure Agreement

Real Property Description

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Commitment No. 10732

SCHEDULE C

The land referred to in this commitment is situated in the State of Idaho, County of Custer and is described as follows:

TRACT I:

TOWNSHIP 14 NORTH, RANGE 19 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.

Section 35: That part of Lot 6 South of a line running West from a point 396 feet South of the center of Section 36.

TRACT II:

A tract of land situated in Government Lot 9, Township 14 North, Range 19 East, Boise Meridian, Custer County, State of Idaho; being more particularly described as follows:

Beginning at the Northeast corner of said Government Lot 9, said point being North $0^{\circ}02'24''$ West, 1317.27 feet from the South quarter corner of Section 35, Township 14 North, Range 19 East, Boise Meridian; thence South $0^{\circ}02'24''$ East, 31.11 feet to a point lying on an existing fence; thence North $89^{\circ}08'35''$ West, 1289.48 feet on or along said fence to a point on the right bank (looking downstream) of the meander channel of the Salmon River; thence leaving said fence line North $30^{\circ}56'38''$ East, 0.57 feet along said right bank to a point lying on the North line of Government Lot 9; thence North $89^{\circ}29'46''$ East, 1289.07 feet along said North line to the POINT OF BEGINNING.

Exhibit B to Diversion Closure Agreement

Partial Decree in Twin Falls County Case No. 39576 dated February 12, 2002

2002 FEB 12 PM 4:10

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

ORDER OF PARTIAL DECREE

Case No. 39576)

For Water Right 72-04192B

On December 18, 2002, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(c)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 72-04192B is hereby decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED 2/12/02

ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 34(b) FOR

Water Right 72-041928

757 FEB 12 PM 4:31

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: RYAN W HUNT
PO BOX 719
CHALLIS, ID 83226

SOURCE: SALMON RIVER TRIBUTARY: SHANE RIVER

QUANTITY: 1.11 CFS

PRIORITY DATE: 04/16/1898

POINT OF DIVERSION: TIAN RISE S35 LOT 09 (SWSESW) Within Custer County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	04-01 TO 10-31	1.11 CFS

PLACE OF USE: Irrigation
TIAN RISE S35 LOT 06 (NEEN) 14.0
14.0 Acres Total Within Custer County

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE APPROPRIATOR IS ENTITLED TO DIVERT UP TO 3.18 CFS FOR UP TO THREE DAYS OUT OF EVERY FOURTEEN DAYS TO MEET PEAK CROP DEMAND SO LONG AS (1) THE TOTAL VOLUME DIVERTED DURING THIS PERIOD DOES NOT EXCEED THE TOTAL VOLUME THAT WOULD BE DIVERTED AT A CONSTANT DIVERSION RATE OF 1.11 CFS OVER A FOURTEEN DAY PERIOD, (2) DIVERSION OF ANY QUANTITY ABOVE 1.11 CFS WILL NOT INJURE OTHER WATER RIGHTS, (3) ANY QUANTITY ABOVE 1.11 CFS WILL NOT BE SUBJECT TO A PRIORITY CALL BY THIS WATER RIGHT OR JUNIOR WATER RIGHTS, AND (4) DIVERSION OF THE HIGHER QUANTITY, 3.18 CFS, DOES NOT CONSTITUTE WASTE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules,



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

2002 FEB 12 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

CERTIFICATE OF MAILING

Water Right(s): 72-04192B

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 72-04192B was mailed
on February 12, 2002, with sufficient first-class postage prepaid
to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

RYAN N HUNT
PO BOX 719
CHALLIS, ID 83226
Phone: 208-879-4213

ROBBIN GLATZ
Chief Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
02/12/02

Exhibit C to Diversion Closure Agreement

Conservation Easement

AMMENDMENT NO. 1
TO
DIVERSION CLOSURE AGREEMENT

This Amendment No. 1 is entered into as of the date of the last signature hereto by and between Ryan Hunt, the Idaho Department of Fish and Game and the Custer Soil and Water Conservation District.

WHEREAS, the parties to this Amendment have entered into a Diversion Closure Agreement of even date herewith, and wish to amend the Diversion Closure Agreement as set forth below;

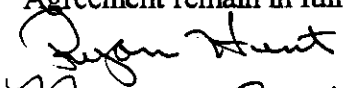
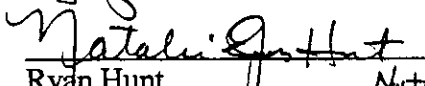
NOW THEREFORE, in consideration of the covenants conditions and agreements set out in the Diversion Closure Agreement and other good and valuable consideration, the parties agree as follows:

1. All terms defined in the Diversion Closure Agreement shall have the same meaning when used herein.

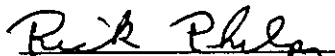
2. Paragraph b. of Article 3. of the Diversion Closure Agreement is hereby modified and amended to read as follows:

b. Priority of Conservation Easement and Title Insurance Contingency. The Conservation Easement shall be first in time and right as against all claims and encumbrances on the Subject Property. The obligation of CSWCD/IDFG to pay any of the sums set forth in this agreement is conditioned upon the ability of CSWCD/IDFG to acquire a policy of title insurance insuring the Conservation Easement as prior in time and right to all other claims, and containing only those exceptions numbered 1- 10, 12, 14 & 15 set forth in the Commitment for Title Insurance, a true and correct copy of which is attached hereto as Exhibit D, and incorporated herein. Landowner shall have the obligation to acquire necessary subordinations or releases from existing mortgage holders or other claimants against the property, as well as the consent of Landowner's spouse.

3. Except as modified above, all terms, covenants and conditions of the Diversion Closure Agreement remain in full force and effect.



Ryan Hunt Natalie E. Hunt

Date: 7-16-02


Custer Soil and Water Conservation District
Chairman

Date: 7-15-02


Idaho Department of Fish and Game

Date: 7-16-02