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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI**

THE IDAHO DEPARTMENT OF
WATER RESOURCES,

Plaintiff,

vs.

FLOYD JAMES WHITTAKER and
JORDAN WHITTAKER, as individuals;
WHITTAKER TWO DOT RANCH, LLC,
an Idaho limited liability company; and
WHITTAKER TWO DOT LAND, LLC,
an Idaho limited liability company,

Defendants.

Case No. CV30-22-0169

AFFIDAVIT OF MERRITT D. UDY

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

I, Merritt D. Udy, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen (18) years and I make this affidavit based upon my own personal knowledge regarding the matters addressed herein.

2. I am the watermaster for Water District 74Z (“WD74Z”). I have served in this capacity since my appointment on June 26, 2019.

3. WD74Z is a subdistrict of Water District 170 (“WD170”). David Graybill is the watermaster for WD170.

4. As watermaster for WD74Z, I administer all non-de minimis surface and groundwater rights in the entire Big Eight Mile and Lee Creek drainage basins to their junction with the Lemhi River in Lemhi County.

5. In 2021, I was instructed to deliver West Springs water in priority to the McConnells downstream on Lee Creek. By placing a metal plate in front of an 18” Cipolletti weir located in the Whittakers’ ditch, I was able to deliver the water west in a return flow ditch back into the Stroud Creek drainage.

6. On April 6, 2022, watermaster Graybill and I conducted a field investigation at Whittaker Two Dot Ranch in Lemhi County. The goal of the field investigation was to understand if and how the Stroud Creek drainage had been altered to prevent Stroud Creek and West Springs water from connecting with Lee Creek and to check the compliance status of measurement devices and control requirements.

7. During the site visit, I confirmed that the West Springs Ditch lacked control structures required by WD74Z and the Idaho Department of Water Resources.

8. During the site visit, I observed earthwork that resulted in a complete block of the return flow ditch I had previously used to deliver West Springs water downstream to the McConnells.

9. I informed watermaster Graybill that I had tried to send water in 2021 down the Stroud Creek channel below Ericsson's Corral. I explained that the water did not reach Lee Creek but was instead intercepted by the Whittakers' ditch system.

10. Watermaster Graybill and I concluded that the Defendants are prohibiting the delivery of Stroud Creek and spring water to the McConnells due to a lack of adequate headgates or controlling works and measuring devices, particularly at the West Springs ditch.

11. On May 18, 2022, watermaster Graybill and I visited Whittaker Two Dot Ranch to determine the compliance status and found that there had not been any changes or visible attempts by the Whittakers to get into compliance.

12. On June 4, 2022, watermaster Graybill and I visited the Whittaker Two Dot Ranch and found the Whittakers were still not in compliance.

13. I believe that we have exhausted all the options and tools at our disposal to deliver water to the senior users on the Lee Creek drainage.

[Remainder of page intentionally left blank. Signature page follows.]

I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 12 day of July-2022.



Merritt D. Udy
MERRITT D. UDY
Watermaster
Idaho Department of Water Resources

SUBSCRIBED AND SWORN before me this 12 day of July 2022.

Tammy Vanderwood
NOTARY PUBLIC FOR IDAHO
Commission Expires: 05/06/2025