

Chris M. Bromley, ISB # 6530
Candice M. McHugh, ISB # 5908
MCHUGH BROMLEY, PLLC
380 S. 4th St., Ste. 103
Boise, ID 83702
(208) 287-0991
(208) 287-0864 (facsimile)
cbromley@mchughbromley.com
cmchugh@mchughbromley.com

Attorneys for Bruce and Glenda McConnell

**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

**DECLARATION OF BRUCE
MCCONNELL**

BRUCE MCCONNELL under penalty of perjury states as follows:

1. I am over the age of eighteen and state the following based upon my own personal knowledge. I currently reside at 100 Cottom Lane, Leadore, Idaho 83464.

2. My wife and I raise beef cattle on a ranch (“the Ranch”) in Lemhi County, Idaho. We irrigate the Ranch with water from Lee Creek. We bought the Ranch in 1993.

3. Before buying the Ranch, we ranched in Lincoln County, Montana. I have been irrigating for 29 years and ranching for 41 years.

4. We normally graze approximately 200 cow/calf pairs at the Ranch. We reduced our herd from 200 pairs to 84 pairs over concerns that we would not have enough water for pasture. We did this because not all upstream water rights are equipped with measuring devices

and control works. This is despite all water rights in the Lee Creek drainage being ordered by the Idaho Department of Water Resources (“IDWR”) to have measuring devices and control works prior to the 2019 irrigation season.

5. We own water rights (“Water Rights”) that are appurtenant to the Ranch, with priority dates listed in parentheses as follows: 74-361 (5/12/1883), 74-362 (5/1/1906), 74-363 (5/12/1883), 74-364 (6/1/1900), 74-365 (5/12/1883), 74-367 (5/12/1883), and 74-368 (11/5/1909). The Water Rights were decreed to my wife and I by the Snake River Basin Adjudication (“SRBA”) district court in 2014. The Water Rights authorize me to irrigate 547.4 acres.

6. The Ranch irrigates with water under our Water Rights from Lee Creek from two points of diversion located at: T.16N, R.25E., S.20, SWSW and T.16N, R.25E, S.20, NENE.

7. Stroud Creek, also known as Left Fork of Lee Creek, is tributary to Lee Creek. There are also springs located above the Ranch that are tributary to Lee Creek, such as water right no. 74-157 (4/1/1916), owned by F. James Whittaker and Paula J. Whittaker (“Whittaker”).

8. The Water Rights that irrigate the Ranch are the senior rights from Lee Creek, Stroud Creek, and springs tributary to Lee Creek, including being senior to Whittaker’s water right no. 74-157.

9. This year, I have been damaged due to not receiving water flowing into Lee Creek from Stroud Creek and springs in the Stroud Creek drainage that are tributary to Lee Creek. Water rights that are junior to our Water Rights divert from tributary sources to Lee Creek causing less water to be available to me under our senior-priority water rights. I will continue to be damaged if junior-priority water rights are not administered or curtailed to allow water to enter Stroud Creek and flow downstream to Lee Creek.

10. Upstream water rights owned by Whittaker and/or Whittaker Two Dot Ranch, LLC that are tributary to Lee Creek are not equipped with measuring devices and control works, despite being ordered by IDWR to have measuring devices and control works since prior to the 2019 irrigation season. This allows Whittaker and/or Whittaker Two Dot Ranch, LLC to divert water without regulation by IDWR and the Watermaster of Water District No. 74-Z. Without measuring devices and control works, the lack of administration and curtailment of junior-priority water rights damages me.

11. The damages that I have suffered this irrigation season are immediate and will continue into the future if upstream junior-priority water users are not forced to install measuring devices and control works that will allow IDWR and the Watermaster for Water District No. 74-Z to administer and curtail junior-priority water rights.

12. As to my immediate damages, I bought fertilizer for this irrigation season but applied it only on one field because I was concerned that I would not receive the water I am entitled to. Due to applying fertilizer on only one field, I estimate that I will only get a partial cutting of hay this year, which I estimate to be approximately 140 tons, and should be enough hay to feed the cattle I own. If I had all of the water I am entitled to, and based on my experience as a rancher and irrigator, I estimate I would have been able to cut approximately 250 tons of hay. If I had an additional 110 tons of hay, I would have sold the hay. Based on current hay prices of \$225 to \$300 a ton, my lost profits are between \$24,750 to \$33,000. But for the unexpected precipitation in May and June, my losses would have been significantly greater.

13. Also as to my immediate damages, I lost out on the ability to use high flows from Lee Creek earlier in the irrigation season because not all of the water that I am entitled to from the Lee Creek drainage was passed downstream through Stroud Creek, resulting in my inability

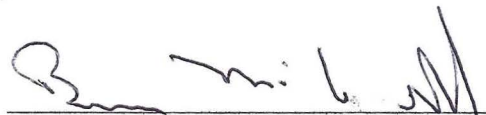
to irrigate all of my pastures. With the water I had, I was only able to irrigate some of my pastures. If I could have irrigated all of my pastures, I would have rented pasture to others. Because I could not rely on the water I am entitled to, I did not rent pasture to others. Based on my experience as a rancher and irrigator, the losses I suffered by not being able to rent pasture is approximately \$18,000.

14. If measuring devices and control works are installed upstream of me this irrigation season, which will allow IDWR and the Watermaster for Water District No. 74-Z to administer and curtail junior-priority water rights, I will immediately put all available water to beneficial use.

15. As to my future damages, the Ranch requires water for irrigation. It should go without saying that dry land in Idaho is worth less than irrigated land. I bought the Ranch because I knew the Water Rights are the senior rights in the Lee Creek drainage. The Water Rights, if properly administered, should allow me to irrigate pasture, raise cattle, market hay to others, and rent pasture. If the Water Rights are not delivered as the senior-priority rights in the Lee Creek drainage, the Ranch will dry up and the investment we made when we bought the Ranch in 1993 will be irreparably harmed into the future.

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

DATED this 11 day of July, 2022.


BRUCE MCCONNELL