

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

Idaho Department of Water Resources,

Plaintiffs

-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,**

Defendant.

Case No. CV-30-22-169

**COURT TRIAL
SCHEDULING ORDER**

**NOTICE: PLEASE READ CAREFULLY AND NOTE ALL DATES, DEADLINES
AND PROCEDURES TO BE FOLLOWED.**

Pursuant to Rule 16 of the Idaho Rules of Civil Procedure, the following Scheduling Order shall govern all proceedings in this case. Therefore, it is hereby ordered as follows:

A. Notice of Hearings.

1. **Court Trial** will commence on **September 13, 2023, at the hour of 9:00 a.m.**
Counsel shall be prepared to meet in chambers at 9:00 a.m. This matter is scheduled for **three (3) days.**
2. A **Formal Pre-Trial Conference** will be held on **August 14, 2023, at the hour of 3:30 p.m.** Pre-trial Conference will be held by zoom.

B. Pre-Trial Conference Procedure.

1. Trial counsel for the parties are ordered to prepare and file a Pre-Trial Memorandum. The Pre-Trial Memorandum shall be filed separately or jointly, but in any event **shall be submitted to the Court at least one (1) week prior to the time of the Pre-Trial Conference. If filed separately, the Pre-Trial Memorandum shall be served upon**

the opposing party one (1) week prior to the time of the Pre-Trial Conference.

The Pre-Trial Memorandum shall contain, in the order outlined below, the following:

- a. An index of all exhibits. The index shall indicate: 1) a brief description of the exhibit, 2) whether the parties have stipulated to admissibility, and if not, 3) the legal grounds for objection. If the memorandum is filed jointly, the index shall also indicate by whom the exhibit is being offered.
- b. An indication of whether depositions, admissions, interrogatory responses, or other discovery responses are to be used in lieu of live testimony, the manner in which such evidence will be presented, and the legal grounds for any objection to such excerpts.
- c. A summary of the documentary evidence supporting the damages sought by the parties and a statement as to whether the parties have stipulated to the admission of the summary under Rule 1006 of the Idaho Rules of Evidence in lieu of the underlying documents.
- d. A list of the names and addresses of all witnesses which such party shall call to testify at trial, including anticipated rebuttal or impeachment witnesses. Expert witnesses shall be identified as such.
- e. A brief non-argumentative summary of the factual nature of the case. The purpose of the summary is to provide an overview of the case.
- f. A statement that counsel have, in good faith, discussed settlement unsuccessfully.
- g. A statement that all answers or supplemental answers to interrogatories under Rule 33 of the Idaho Rules of Civil Procedure reflect facts known to the date of the Memorandum.
- h. Any admissions or stipulations of the parties which can be agreed upon by the parties.
- i. Any amendments to the pleadings and any issues of law abandoned by any of the parties.
- j. A short statement of the issues of fact and law which remain to be litigated at the trial and those legal authorities upon which the party relies as to each issue

of law to be litigated. In addition the parties shall include a statement of whether liability is disputed.

k. A listing of all anticipated motions in limine and any orders which shall expedite the trial.

2. At the Pre-Trial Conference, counsel will be provided an Exhibit List which shall be submitted with each party's exhibits as outlined in paragraph E below. The list shall be provided to counsel in advance of the pretrial conference.

C. Discovery Procedures and Deadlines.

1. **Discovery cutoff will be on or before the scheduled Pre-Trial Conference.**

Counsel are advised that this cutoff means that ALL discovery will be COMPLETE by that deadline.

2. **Expert Witnesses:** Plaintiff shall disclose the names and addresses of all expert witnesses in the manner outlined in Rule 26(b)(4)(A)(i) of the Idaho Rules of Civil Procedure, disclosing the person expected to be called as an expert witness, the subject matter on which the expert is expected to testify, and the underlying facts and data upon which the expert opinion is based, no later than **one hundred twenty (120) days before Trial.** The Defendant shall also comply with Rule 26(b)(4)(A)(i) of the Idaho Rules of Civil Procedure and make a similar disclosure of their expert witnesses no later than **ninety (90) days before Trial.** Plaintiff shall disclose rebuttal expert witnesses no later than **sixty (60) days before Trial.**

3. Witnesses not disclosed in this manner will be subject to exclusion at trial.

4. Any witnesses discovered after the last required disclosure shall immediately be disclosed to the Court and opposing counsel by filing and service stating the date upon which the same was discovered.

D. Motion Cutoff:

1. **All Summary Judgment Motions must be filed in compliance with Rule 56 of the Idaho Rules of Civil Procedure. Such motions must be filed one hundred and twenty days (120) days before trial.** The motion, affidavits and supporting brief shall be served at least twenty-eight (28) days before the time fixed for the hearing. Opposing affidavits and answering brief must be served at least fourteen (14) days

prior to the date of the hearing. The moving party shall thereafter serve a reply brief within seven (7) days before the hearing.

2. **All other motions must be filed thirty (30) days before trial.** This includes all motions concerning any objections to the testimony of experts at trial. This does not include other motions in limine the parties shall wish to file in compliance with the Idaho Rules of Civil Procedure.

E. Exhibits:

1. **All exhibits that are to be introduced at trial shall be pre-marked and deposited with the Clerk of the Court fourteen (14) days before trial,** except those for impeachment.
2. Plaintiff's exhibits shall be marked in numerical sequence. Defendant's exhibits shall be marked in alphabetical sequence. Labels may be obtained from the Clerk of the Court, and should have the case number and start date of trial shown on them.
3. Photographs shall be produced on separate pages and shall be individually marked.
4. **A duplicate set of all exhibits shall also be provided to the Court fourteen (14) days before trial,** except those for impeachment. The duplicate set shall be placed in binders, indexed and deposited with the Clerk of the Court for use of the Court.
5. No exhibits shall be admitted into evidence at trial other than those disclosed, listed and submitted to the Clerk of the Court in accordance with this order, except when offered for impeachment purposes or unless they were discovered after the last required disclosure.

F. Mediation:

1. Mediation shall be completed on or before **August 14, 2023.**

This order shall control the course of this action unless modified for good cause shown to prevent manifest injustice. Pursuant to Rule 16(i) of the Idaho Rules of Civil Procedure, if a party or party's attorney fails to obey a scheduling or pre-trial order, or if no appearance is made on behalf of a party at a scheduling or pre-trial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or his own initiative, shall make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the Court shall require the party or the

attorney representing said party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

All meetings and/or hearings with the Court in the matter shall be scheduled in advance with the Court's Clerk. The Court appreciates time to adequately consider each issue before it, prior to a hearing and/or meeting.

ALTERNATE JUDGES: Notice is hereby given that the presiding judge assigned to this case intends to utilize the provisions of I.C.R. 25(a)(6). Notice is given that if there are multiple parties, any Disqualification pursuant to I.C.R. 25(b) & (c) is subject to a prior determination under I.C.R. 24(c). The panel of alternate judges consists of the following judges who have otherwise not been disqualified in this action Steven W. Boyce, Richard St. Clair, Darla Williamson, William Woodland, Jon J. Shindurling, Joel E. Tingey, Dane H. Watkins, Jr., Bruce L. Pickett and Alan C. Stephens.

DATED 10/24/2022 3:40:15 PM



STEVAN H. THOMPSON
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 10/24/2022 04:24 PM a true and correct copy of the **COURT TRIAL SCHEDULING ORDER**, was served on the attorneys and/or persons listed below as follows:

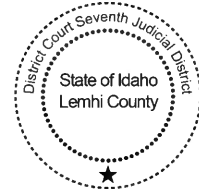
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BRENDA ARMSTRONG
Clerk of the District Court



Jana Eagle

Deputy Clerk