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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

**PLAINTIFF'S I.R.C.P.
26(b)(4)(A)(i) EXPERT WITNESS
DISCLOSURE**

Plaintiff, the Idaho Department of Water Resources (“the Department”), through the Office of the Idaho Attorney General, makes the following disclosure of expert testimony, pursuant to Idaho Rule of Civil Procedure 26(b)(4)(A)(i). The following experts are expected to testify on behalf of the plaintiff at trial:

I. Retained Experts

A. Tim Luke, Water Compliance Bureau Chief, Idaho Department of Water Resources.

1. Mr. Luke will testify to the following:
 - i. The Department’s Final Order Requiring Controlling Works and Measuring Devices on Surface and Ground Water Diversion in Administrative Basin 74 (“Final Order”). *In re Requiring Controlling Works & Measuring Devices on Surface & Ground Water Diversions in Admin. Basin 74* (Idaho Dep’t of Water Res. Sep. 28, 2018), <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/orders/2018/20180928-Final-Order-Requiring-Measuring-Devices-Basin-74.pdf>.
 - ii. The Department’s Water Measurement Guidelines (“Measurement Guidelines”). Idaho Dept. of Water Res. (Version 7.c 2009), <https://idwr.idaho.gov/wp-content/uploads/sites/2/water-measurement/IDWR-Water-Measurement-Reporting-Guidelines.pdf>.
 - iii. The Department’s Minimum Acceptable Standards and Requirements for Open Channel and Closed Conduit Measuring Devices (“Minimum Acceptable Standards”). Idaho Dept. of Water Res. (2023), <https://idwr.idaho.gov/wp-content/uploads/sites/2/water-measurement/MinAcceptStandards-MeasDevices-2023Update.pdf>.
2. Based on the Final Order, Water Measurement Guidelines, and the Minimum Acceptable Standards, Mr. Luke will opine as to the Department’s role and responsibility for ensuring that necessary and suitable controlling works, including headgates, and measuring devices are installed in Administrative Basin 74.

3. Mr. Luke has been with the Department for 34 years. He has technical, specialized knowledge about the creation and implementation of the Department's published guidelines and requirements for suitable controlling works, including headgates, and measuring devices.
4. Mr. Luke is not receiving compensation for his testimony in these proceedings beyond his standard compensation as an employee of the Department. Mr. Luke's employment with the Department does not regularly involve giving expert testimony.
5. Mr. Luke has not testified in any cases within the preceding four years. He has provided testimony by deposition in one administrative contested case before the Department within the preceding four years. This case is:
 - i. *In the Matter of Basin 37 Administrative Proceeding*, No. AA-WRA-2021-001 (Idaho Dep't of Water Res. May 28, 2021).

B. Rob Whitney, Water Distribution Section Manager, Idaho Department of Water Resources.

1. Mr. Whitney will testify to the following:
 - i. The Department's Final Order.
 - ii. The Department's Measurement Guidelines.
 - iii. The Department's Minimum Acceptable Standards.
2. Based on the Final Order, Water Measurement Guidelines and the Minimum Acceptable Standards, Mr. Whitney will opine as to the Department's role and responsibility for ensuring that necessary and suitable controlling works, including headgates, and measuring devices are installed in Administrative Basin 74. Mr. Whitney will also testify as to the Department's administration of water pursuant to the doctrine of Prior Appropriation.
3. Mr. Whitney has been with the Department for almost 35 years. Mr. Whitney has technical, specialized knowledge about the Department's responsibility to administer and distribute water via water districts and the necessity of suitable controlling works, including headgates, and measuring devices in Administrative Basin 74.
4. Mr. Whitney is not receiving compensation for his testimony in these proceedings beyond his standard compensation as an

employee of the Department. Mr. Whitney's employment with the Department does not regularly involve giving expert testimony.

5. Mr. Whitney has not testified in court within the preceding four years. He has not provided testimony by deposition within the preceding four years.

C. David Graybill, Technical Hydrologist and Watermaster for Water District 170, Idaho Department of Water Resources

1. Mr. Graybill will testify to the state of the water system at issue in this litigation, including an analysis of soil and water conditions present in the Stroud and Lee Creek drainages. Mr. Graybill will also testify to the necessary locations and type of suitable controlling works, including headgates, and measuring devices that should be installed by the Defendants.
2. Mr. Graybill has technical and personal knowledge of the hydrology of the Stroud and Lee Creek drainages at issue in this litigation.
3. Mr. Graybill will rely on GIS and other publicly available maps to identify the locations of the necessary and suitable controlling works, including headgates, and measuring devices.
4. Mr. Graybill has a Bachelor of Science in environmental science, physical science, and hydrogeology from the University of Idaho, and a Master of Science in soil and land resources from the University of Idaho. Mr. Graybill served as Assistant Watermaster for Water District 130 (April 2020–October 2021) and Watermaster for Water District 170 (July 2021–present).
5. Mr. Graybill is not receiving compensation for his testimony in these proceedings beyond his standard compensation as an employee of the Department. Mr. Graybill's employment with the Department does not regularly involve giving expert testimony.
6. Mr. Graybill has not testified in any cases in the preceding four years. Mr. Graybill has not been deposed in the preceding four years.

DATED this 16th day of May 2023.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

A handwritten signature in blue ink, appearing to read "Lacey Rammell-O'Brien", is written over a horizontal line. The signature is stylized and extends to the right with a long, thin stroke.

LACEY RAMMELL-O'BRIEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May 2023, I caused to be served a true and correct copy of the foregoing *Plaintiff's I.R.C.P. 26(b)(4)(A)(i) Expert Witness Disclosure*, via iCourt E-File and Serve, upon the following:

Robert L. Harris

Luke H. Marchant

HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

efiling@holdenlegal.com



LACEY RAMMELL-O'BRIEN

Deputy Attorney General

Idaho Department of Water Resources