

**RAÚL R. LABRADOR**  
ATTORNEY GENERAL

**SCOTT L. CAMPBELL**  
Chief of Energy and Natural Resources Division

**GARRICK L. BAXTER, ISB No. 6301**  
**LACEY RAMMELL-O'BRIEN, ISB No. 8201**  
Deputy Attorneys General  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83720-0098  
Telephone: (208) 287-4800  
Facsimile: (208) 287-6700  
[garrick.baxter@idwr.idaho.gov](mailto:garrick.baxter@idwr.idaho.gov)  
[lacey.rammell-obrien@idwr.idaho.gov](mailto:lacey.rammell-obrien@idwr.idaho.gov)

*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)  
REBUTTAL 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 rebuttal expert

testimony, pursuant to Idaho Rule of Civil Procedure 26(b)(4)(A)(i). The following experts are expected to provide rebuttal testimony on behalf of the plaintiff at trial:

**I. Rebuttal Expert Witnesses**

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

1. Mr. Graybill will provide testimony to rebut and respond to Defendants' expert Bryce Contor's testimony and the August 3, 2022 *Whittaker Measuring Device and Diversion Report* prepared by him. Specifically, Mr. Contor's conclusions about the suitability of Defendants' existing controlling works and measuring devices and the necessity and placement of controlling works and measuring devices not currently at or near applicable points of diversion.
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.


**B. Merritt Udy, Watermaster for Water District 74Z, Big Eight Mile Creek and Lee Creek basins to their junction with the Lemhi River in Lemhi County, Idaho Department of Water Resources**

1. Mr. Udy will provide testimony to rebut and respond to Defendants' expert Bryce Contor's testimony and the August 3, 2022 *Whittaker Measuring Device and Diversion Report* prepared by him. Specifically, he will utilize his personal experience as the Lee Creek watermaster to testify to the features of the watershed and the control systems utilized so that delivery can be effectuated in Water District 74Z.

2. Mr. Udy has personal knowledge of the Lee Creek basin from his experience as the Water District 74Z watermaster.
3. Mr. Udy will rely on GIS and other publicly available maps to identify and corroborate the descriptive locations in the Lee Creek drainage to clarify and rebut the conclusions made by Mr. Contor in his report.
4. Mr. Udy has served as the Water District 74Z watermaster since his appointment on June 26, 2019.
5. Mr. Udy is not receiving compensation for his testimony in these proceedings.
6. Mr. Udy has not testified in any cases in the preceding four years.  
Mr. Udy has not been deposed in the preceding four years.

DATED this 14th day of July 2023.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL



LACEY RAMMELL-O'BRIEN  
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14th day of July 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) Rebuttal 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](mailto:efiling@holdenlegal.com)



LACEY RAMMELL-O'BRIEN

Deputy Attorney General

Idaho Department of Water Resources