

RECEIVED

SEP 22 2006

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
SEP 21 2006	
By _____	Clerk
_____	Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

ORDER GRANTING MOTION TO FILE
LATE NOTICE OF CLAIM

For water right claims: 74-15681 & 74-15682

On May 22, 2006, the claimant, James Whittaker, filed a *Motion to File Late Notice of Claim* for the above-captioned water right. The claimant appeared *pro se*. A hearing was held on the *Motion* September 19, 2006. The *Motion* complied with all procedural requirements under *SRBA Administrative Order 1*, and no objections were made to this late *Notice of Claim*.

THEREFORE, IT IS ORDERED, that the *Motion to File a Late Notice of Claim* for the above-captioned water right is **granted—subject to the following**. The claimant is **admonished that for purposes of future proceedings he can either address the Court *pro se* or through counsel but may not appear in the matter through a non-attorney engineer or the like. Failure to abide by this admonishment in future proceedings could result in sanctions including dismissal of claim.**

The original Notice of Claim, as well as any attached filing fees, and a copy of this *Order* will be forwarded to the Idaho Department of Water Resources for further action. Following investigation by the Idaho Department of Water Resources, recommendation for the claim will be reported in the next *Late Claims Director's Report* which is issued on an annual basis. This modifies the provisions of *SRBA Administrative Order 1* 4d(2)(h).

IT IS SO ORDERED.

Dated: September 20, 2006.


JOHN M. MELANSON

Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE LATE NOTICE OF CLAIM was mailed on September 21, 2006, with sufficient first-class postage to the following:

F JAMES WHITTAKER
JAMES WHITTAKER
PAULA J WHITTAKER
PO BOX 240
LEADORE, ID 83464
Phone: 208-768-2491

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

A handwritten signature in cursive script, appearing to read "Julie Murphy", is written over a horizontal line.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER
FROM THE SNAKE RIVER BASIN
WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 74-15682

Date Received 9-25-06

Receipt Number 0062251

**NOTICE OF CLAIM
TO A
WATER RIGHT**

ACQUIRED UNDER STATE LAW

1. Claimant: F. James Whittaker
PO Box 240
Leadore ID 83464
208 768 2491
2. Date of Priority: 3/15/1982
3. Source of water (a) Big Eightmile Creek
which is tributary to (b) Lemhi River
4. a. Location of points of diversion:

Township	Range	Section	QQQ	Diversion Name
16N	25E	28	SWSE	

5. Description of existing diversion works.

Lockable headgate and weir in
open ditch

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG - 1 2006	
By _____	Clerk
_____	Deputy Clerk

6. Water is claimed for the following purposes:

Purpose	Start Date	End Date	cfs	acre feet/year
Irrigation	3/15	11/15	2.1	

7. Total quantity claimed (a) 2.1 (cfs) and/or (b) (acre feet per year)

8. Total consumptive use claimed is _____-acre feet per annum.

9. Non-irrigation uses:

10. Description of place of use

Township	Range	Section													
16N	25E	26													
NE		NW	SW	SE											
NE NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Total
											27	21			48

Total number of acres irrigated 48

11. Irrigated lands are located in county(s) of: Lemhi

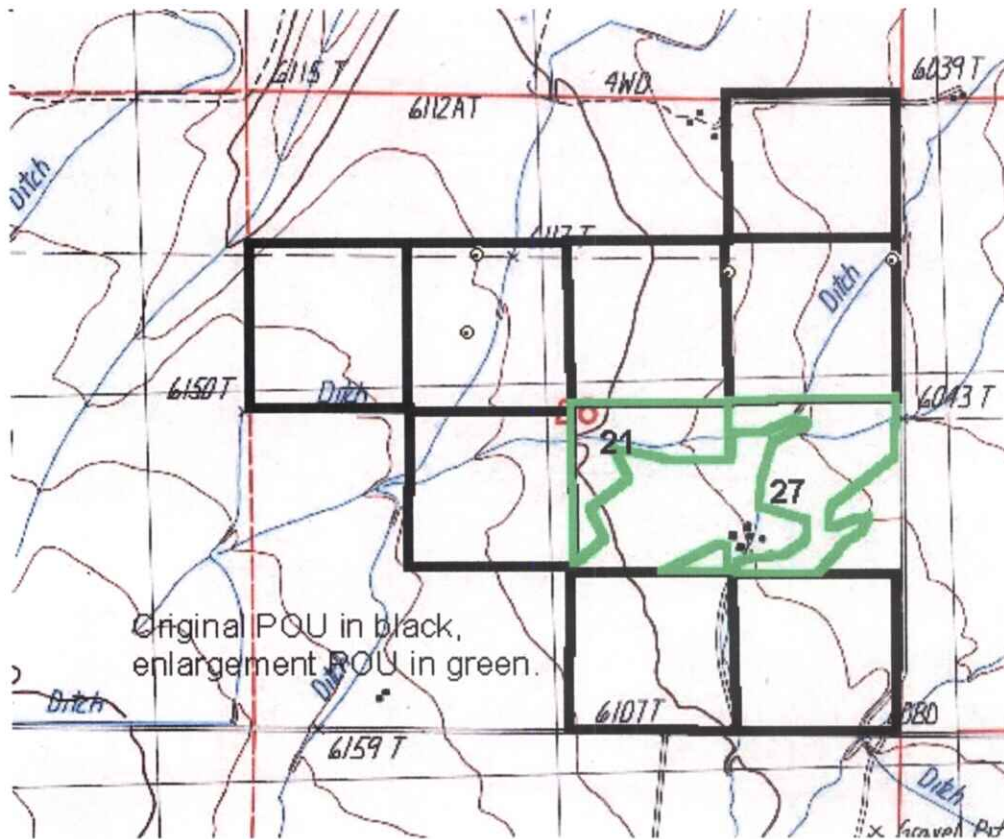
12. Do you own the property listed above as place of use? Yes

13. Describe any other water rights used at the same place and for the same purposes as described above:

This is an enlargement of 74-345 and high-water right 74-15682.

14. Remarks.. In the early 1980s a formal IDWR transfer moved the water from the N1/2 SE1/4 to the S1/2 SE1/2 but because of the way the land lay, tailwater from the north, west and south continued to supply enough water that part of this parcel continued to be irrigated. Please see attached affidavit.

Map of project:



15: Basis of Claim: Beneficial Use

IDWR water right number (none)

16: Signatures

Number of attachments _____

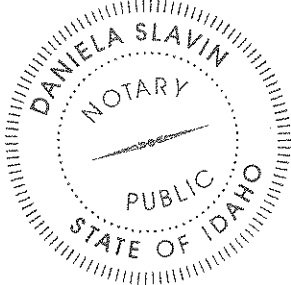
I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) *Francis J. Whittaker* Date *7/27/06*
Paula J. Whittaker Date *7-27-06*

State of Idaho/or _____)
County of Lemhi) SS.

Subscribed and sworn (or affirmed) before me this 27th day of July 2006

SEAL



Notary Public Daniela Slavin

Residing at Salmon, Idaho

My Commission Expires 11.15.2011



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

September 3, 1982

Floyd James Whittaker
Box 177
Leadore, ID 83464

Dear Mr. Whittaker:

The determination of water rights in the Lemhi drainage is almost finished. The specific objections of record dealing with individual water rights essentially are resolved and the majority of general objections have been resolved. I am writing to you because one of the unfinished matters affects you directly.

Shortly after the proposed finding of water rights in the Lemhi drainage (called the "green book" because of its cover) was filed with the district court in Salmon, you were among a number of water right users who filed written objections to the acre-foot limitation, the season of use, and the treatment of "high water." These are general matters which affected all water rights and have been termed "general objections." To complete the Lemhi Adjudication, all of these general objections must be resolved or go to trial.

Many of the water users who filed general objections were represented by attorneys; however, you were among those general objectors who were not represented by an attorney or are no longer represented by an attorney. Over the past several years, the attorneys who represented general objectors have worked with the Idaho Department of Water Resources to settle the problems relating to the acre-foot limitation, the season of use, and the use of "high water." An agreement was reached between the Department and all attorneys of record in the Lemhi River Adjudication proceeding and was signed this last winter and approved by the court. The agreement, called a "stipulation resolving general objections," is available for your review at the Lemhi County Courthouse if you wish to review it. Pages 2 and 3 of the stipulation show which of the general objectors were represented by the attorneys who signed the stipulation. The three general objections were essentially resolved, however, by making the following changes in the Department's previous recommendations to the District Court:

Sept. 3, 1982

Page 2

- a) The 3.0 acre-feet per acre originally recommended as a volume at the field headgate has essentially been eliminated. The Findings of Fact and Conclusions of Law now state that the consumptive irrigation requirement (the amount of water required to raise alfalfa or wild hay in the Lemhi River Basin) is 1.45 AF/acre. This is factual information and will not be used to limit delivery of water under existing rights as was the original concern of objectors. Water will be delivered as historically done - by rate of diversion (cfs or miner's inch) to the land to which it is appurtenant.
- b) The normal irrigation season originally recommended as April 1 to November 1 has been changed to March 15 to November 15 of each year with the provision that in some cases water has been and can be applied to a beneficial use outside the normal irrigation season.
- c) The use of "flood water" or "high water" concern has been resolved by essentially changing the original recommendation to say that the existing decreed streams as listed in Conclusion of Law # 3 in the "Green Book" can operate as distinct and separate streams from the mainstream Lemhi River priorities including future appropriations on those particular decreed streams shown in Conclusion of Law # 3.

The individuals who are listed on the "stipulation resolving general objections" had the same general objections as you. For this reason, it is believed that the provisions of the stipulation should also satisfy your concerns. If the stipulation is satisfactory to you, please sign the enclosed "agreement to stipulation" and return to me by September 30, 1982. The court will then be notified that your objection has been settled. If the stipulation is not satisfactory, do not sign the "agreement to stipulation." You will be notified at a later date of a time when your objection can be scheduled for trial before the district court.

A list of all the general objectors who were not represented by attorneys is included. With this list and the names on the stipulation you have the names of all the other general objectors if you would want to discuss this matter with any of them.

Sept. 3, 1982
Page 3

Please feel free to contact me if you have any questions about the stipulation or this letter.

Sincerely,

A handwritten signature in cursive script that reads "L. Glen Saxton". The signature is written in dark ink and is positioned above the typed name.

L. Glen Saxton, Chief
Operations Bureau

LGS:jh
Encls.

4: Water

Attachment # 2

01/19/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 74-15196

NAME AND ADDRESS: F JAMES WHITTAKER
PO BOX 240
LEADORE ID 83464

PAULA J WHITTAKER
PO BOX 240
LEADORE ID 83464

SOURCE: BIG EIGHTMILE CREEK

TRIBUTARY: LEMHI RIVER

QUANTITY: 7.000 CFS

PRIORITY DATE: 03/15/1966

This water right is subordinated to all water rights with a priority date earlier than October 3, 1974.

POINT OF

DIVERSION: T15N R25E S5 SENE Within LEMHI County

T16N R25E S28 SWSE Within LEMHI County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/05 11/15

7.000 CFS

PLACE OF USE: IRRIGATION Within LEMHI County

T16N R25E S26	NWSW	40.00	T16N R25E S26	SWSW	38.00
T16N R25E S27	SWNE	36.00	T16N R25E S27	SENE	40.00
T16N R25E S27	NESE	40.00	T16N R25E S27	NWSE	40.00
T16N R25E S27	SWSE	40.00	T16N R25E S27	SESE	40.00

314 ACRES TOTAL

This right authorizes the irrigation of 314.7 total acres.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

This right is supplemental to water right no. 74-341.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use