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Attorney for David Tomchak

**BEFORE THE DEPARTMENT OF WATER RESOURCES
IN THE STATE OF IDAHO**

IN THE MATTER OF APPLCATION	)	
FOR TRANSFER 84441 IN THE NAME	)	TOMCHAK'S NOTICE JOINING
OF BRUCE AND GLENDA	)	IN PART MCCONNELLS' MOTION IN
MCCONNELL	)	LIMINE
	)	
	)	

David Tomchak hereby gives notice that he joins in part the McConnells' motion in limine and motion to strike. Tomchak specifically joins Part B of the McConnells' memorandum seeking to exclude the Whittakers' Exhibit 153 relating to the Kauer Ditch.

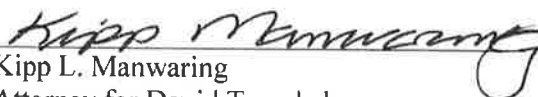
Tomchak affirmatively states that diversion of water through the Kauer Ditch is not an issue in this proceeding. The Kauer Ditch traverses Tomchak's property. Representations have been made that the Idaho Supreme Court decision in *Whittaker v. Kauer*, 78 Idaho 94, 298 P.2d 745 (1956) may control certain issues in this proceeding. No judicial declaration was made in *Whittaker* pertaining to a ditch right involving the Kauer Ditch or to any easement for access to the ditch upon what is now Tomchak's land. No person holds a recognized water right with a point of diversion in the Kauer Ditch.

Exhibit 153 suggests the Kauer Ditch was historically used to convey water, but that ditch has no bearing on the McConnells' application. Nothing in the McConnells' application remotely suggests any right to or interest in the ditch. Tomchak believes any right to divert water through the Kauer Ditch has been forfeited by nonuse for five years. See I.C. § 42-222(2).

Accordingly, Tomchak joins that part of the McConnells' motion.

Oral argument is requested.

Dated this 12th day of April 2021.


Kipp L. Manwaring
Attorney for David Tomchak

CERTIFICATE OF MAILING

I hereby certify that on this 12th day of April, 2021, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed below by the method(s) indicated.

DOCUMENT SERVED:

TOMCHAK'S NOTICE JOINING
IN PART MCCONNELLS' MOTION IN
LIMINE

EMAIL TO:

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