

Applicant has agreed to 74-16008 being supplemental with the Idaho Department of Fish and Game and the Lemhi Irrigation District.

REQUEST FOR ADMISSION NO. 7: Admit that "supplemental" is defined in this case as:

The right holder shall be entitled to a combined diversion rate of 5.76 cfs, as measured at the Tendoy Lane measuring device and the measuring device for the point of redirection located west of Hwy 28 for water rights 74-740, 74-741, 74-742, 74-7147, and 74-16008. Prior to diverting water under this right, the right holder shall make full beneficial use of water rights 74-740, 74-741, 74-742, and 74-7147 for irrigation of any of the same lands authorized to be irrigated under this right. When water rights 74-740, 74-741, 74-742, and 74-7147, or any portion thereof, are out of priority the right holder may divert up to 5.76 cfs of water under this right to fulfill the portion out of priority.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Objection, the hearing office did not authorize requests for admission. The Applicant further objects to this request for admission because it calls for a legal conclusion. Without waiving said objections, the Applicant denies this request for admission. The above condition does not "define" supplemental in this case, rather, it is specific to the Applicant's situation and embodies the principle that 74-16008 will be used up to the amount of any water rights that are being curtailed under priority administration. Applicant therefore believes that 74-16008 is supplemental because it is a "back up" water right that will allow the Applicant to irrigate and produce crops when his base rights, or any one of them, are out of priority up to the amount that is out of priority. However, there is no statutory definition or rule definition of "supplemental," and for this reason, the Applicant denies this request for admission.

REQUEST FOR ADMISSION NO. 8: Admit that, when water rights 74-740, 74-741, 74-742, and 74-7147 are used in combination with the "supplemental" water right application