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Transmittal Cover

To: Robert Harris
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Case Morgan, IDWR
287-6700

From: Harriet A. Hensley
Deputy Attorney General
Natural Resources Division

Document Description: Re Stipulation for Water Supply Bank Lease involving
James Whitaker Nos. 74-2320 and 74-15190

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 State of Idaho

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Attorneys for the Idaho Water Resource Board

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION TO)
 RENT WATER FROM THE WATER)
 SUPPLY BANK NOS. 74-2320 AND 74-)
 15190 IN THE NAME OF THE IDAHO)
 WATER RESOURCE BOARD)

STIPULATION

James Whittaker ("Whittaker"), by and through his counsel of record, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, P.L.L.C., and the Idaho Water Resource Board ("TWRB" or "Board"), by and through its counsel of record, Harriet A. Hensley, Deputy Attorney General for the State of Idaho, hereby stipulate as set forth below. This Stipulation is entered into for the purpose of settlement, in part, of the proceedings regarding the September 20, 2006 Water Supply Bank Rental Agreement for a portion of Water Right Nos. 74-2320 and 74-15190 (Rental

Agreement) and Whittaker's April 7, 2008 protest to the Rental Agreement ("Protest"). The Rental Agreement and the Protest are hereby attached as Appendix A and Appendix B.

A. TERMS AND CONDITIONS OF STIPULATION

1. Whittaker hereby agrees to withdraw his Protest to the Rental Agreement for the 2011 rental period only. Whittaker acknowledges that the Rental Agreement can be implemented beginning on June 1, 2011 and continue until and including November 15, 2011. Whittaker's Protest of the Rental Agreement for the remaining years shall remain in full force and effect, and Whittaker expressly reserves his Protest for the 2012-2015 time period. Notwithstanding the above, Whittaker is not prohibited under this Stipulation from filing a petition pursuant to Idaho Code § 42-1766 to revoke or modify the 2011 Rental Agreement upon a showing of injury to water rights to which he is entitled.
2. IDWR shall continue to collect flow data from the pressure transducer gage located just downstream of the Ellsworth diversion location on 18-mile creek. IDWR will take photographs (at least once during the irrigation season) of the reach below the transducer gage. IWRB will compile and provide this information to Whittaker by April 1, 2012, and will provide reported flow data to Whittaker upon reasonable demand during the 2011 irrigation season if requested by Whittaker.
3. The IWRB shall take no position on the Motion For Independent Hearing Officer filed by Whittaker on May 1, 2009 or any future motion filed under IDAPA Rule 37.01.01.412 in this proceeding.

4. On or before December 15, 2011, Whittaker and the IWRB shall notify the hearing officer of any progress made in settlement discussions pertaining to the Rental Agreement and/or of the need for a contested case scheduling conference.

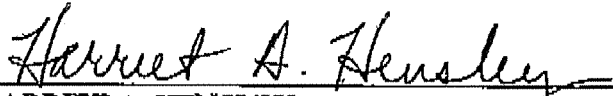
B. MISCELLANEOUS PROVISIONS

1. This Agreement shall bind and inure to the benefit of the respective successors and assigns of the Parties.
2. This Agreement sets forth all of the covenants, promises, provisions, agreements, conditions, and understandings between the Parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.
3. This Agreement represents a settlement of disputed issues reached as a result of good faith negotiations. This Agreement shall not be construed so as to waive or prejudice any contention or right by either Party except for purposes of effectuating this Agreement. No offers and/or compromises made in the course of negotiations shall be construed as admissions against interest or be used in any legal proceeding.
4. This Agreement shall be effective upon the last date executed by signature of the authorized representatives of both Parties as set forth below. This Agreement may be terminated or modified, but only by means of a written agreement signed by an authorized representative of each of the Parties hereto.
5. This Agreement may be executed in counterparts by the Parties and such counterparts, once executed, shall together constitute one final agreement binding the Parties to this Agreement as if one document had been signed by all Parties.

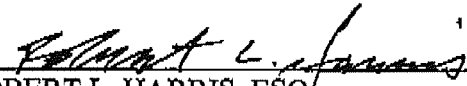
IN WITNESS WHEREOF, intending to be legally bound, the Parties have duly executed this agreement as set forth below.

Dated this 25th day of May, 2011.

IDAHO WATER RESOURCE BOARD


HARRIET A. HENSLEY
DEPUTY ATTORNEY GENERAL

Dated this 19th day of May, 2011.


ROBERT L. HARRIS, ESQ.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I certify that on the 25th day of May 2011 I caused to be served a true and correct original/copy of the foregoing STIPULATION upon the following parties by the method listed below:

1. The original to:

GARY SPACKMAN, HEARING OFFICER
IDAHO DEPT OF WATER RESOURCES
PO BOX 83720
BOISE ID 83720-0098

☒ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Fax

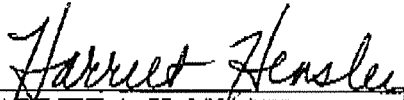
2. Copies to:

ROBERT L. HARRIS, ESQ.
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
P.O. BOX 50130
1000 RIVERWALK DRIVE, SUITE 200
IDAHO FALLS ID 83405

☐ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Fax

MORGAN CASE
IWRB
PO BOX 83720
BOISE ID 83720-0098

☐ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Fax


HARRIET A. HENSLEY
Deputy Attorney General
Natural Resources Division

APPENDIX A

WATER SUPPLY BANK RENTAL AGREEMENT

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WATER SUPPLY BANK RENTAL AGREEMENT

This is to certify that: IDAHO WATER RESOURCES BOARD
PO BOX 83720
BOISE ID 83720

filed an application to rent water from the Water Supply Bank ("bank") The Idaho Water Resource Board ("Board") being authorized to operate a bank and to contract by and through the Director of the Idaho Department of Water Resources ("Director, department") for rental of water from the bank agrees to rent water as follows:

Summary of Water Rights or Portions Rented from the Bank

Right	Rented Rate	Rented Volume	Total Rented Acres
74-2320	0.53 cfs	63.4 af	26.5 ac
74-15190	0.19 cfs	63.4 af	26.5 ac
COMBINED RENTAL TOTALS:	0.53 cfs	63.4 af	26.5 ac

TERM OF RENTAL: 06/01 to 11/15, 2006
(See conditions of water use for extension of rental period)

TOTAL RENTAL FEE: \$1,777.78 per year

The fee for rental of the above-described water is \$1,777.78 per year. An annual payment shall be received by the Department of Water Resources on or about November 15, the end of the irrigation season, each year for the duration of the rental period. The agreement will be void if the payment is not received in a given year.

Detailed water right specific limitations and conditions attached

The undersigned renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described in this agreement:

Dated this 20th day of September, 2006

by Jerry Rigby
(Print Name)

[Signature]
(Signature)
IWRB Chairman
(Title if on behalf of company or organization)

Having determined that this agreement satisfies the provisions of Section 42-1763, Idaho Code, and, IDAPA 37.02.03030 (Water Supply Bank Rule 30), for the rental and use of water under the terms and conditions herein provided, and none other, I hereby execute this Rental Agreement on behalf of the Idaho Water Resource Board this 20th day of September, 2006.

[Signature]
for KARL J. DREHER, Director
Department of Water Resources

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**WATER RIGHT NO(S). 74-2320
WATER SUPPLY BANK RENTAL AGREEMENT**

The renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described below:

Renter: IDAHO WATER RESOURCES BOARD
PO BOX 83720
BOISE ID 83720

Priority Date: 11/08/1957

Source: EIGHTEEN MILE CREEK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
INSTREAM FLOW	06/01	to 11/15	0.53 CFS	63.4 AF
			Total: 0.53 CFS	63.4 AF

LOCATION OF RENTER'S POINT(S) OF DIVERSION:

Under water right 74-14993:

LEMHI RIVER SW1/4SE1/4SE1/4 Sec 24, Twp 21N, Rge 22E, B M LEMHI County

(Beginning of Reach)

LEMHI RIVER L9 (SW1/4SW1/4SW1/4) Sec. 32, Twp 22N, Rge 22E, B M LEMHI County

(Ending of Reach)

RENTER'S PLACE OF USE:

INSTREAM FLOW WITHIN DESIGNATED STREAM REACH FROM THE BEGINNING POINT TO THE ENDING POINT DESCRIBED ABOVE.

CONDITIONS OF WATER USE

- 1 This rental is limited to the consumptive portions of the leased parts of rights 74-2320 and 74-15190, and is limited to a combined diversion volume of 45.3 afa and a continuous diversion rate of 0.14 cfs for use from June 1 to November 15, 2006.
- 2 This rental agreement authorizes use of water for the described purpose during the 2006 irrigation season and may be extended through 2015 pending the outcome of notice of the intended rental as required in Section 42-222(1) Idaho Code.
- 3 Delivery of water in accordance with this rental agreement shall be subject to the limitations and conditions of water right 74-14993.
- 4 The use of water under this agreement shall be subject to the provisions of Section 42-1766, Idaho Code.
- 5 Rental of the specified right from the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication or any other department application process.

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WATER RIGHT NO(S). 74-2320
WATER SUPPLY BANK RENTAL AGREEMENT

CONDITIONS OF WATER USE

- 6 Upon Department request, the renter shall provide for the measurement of the water diverted in a manner acceptable to the Director and shall report the amount of water diverted at the end of the irrigation season.
7. Use of water under this agreement does not constitute a dedication of the water to renter's place of use and upon expiration of this agreement, the points of diversion and place of use of the water shall revert those authorized under the water right and/or again be available to rent from the bank
8. This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party
9. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
- 10 Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water
- 11 Renter acknowledges and agrees that the Director may terminate diversion of water if the Director determines there is not a sufficient water supply for the priority of the right or portion thereof being rented
- 12 Failure of the right holder to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement

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**WATER RIGHT NO(S). 74-15190
WATER SUPPLY BANK RENTAL AGREEMENT**

The renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described below:

Renter: IDAHO WATER RESOURCES BOARD
PO BOX 83720
BOISE ID 83720

Priority Date: 03/15/1966

Source: TEXAS CREEK

<u>BENEFICIAL USE</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
INSTREAM FLOW	06/01 to 11/15	0.19 CFS	63.4 AF
	Total: 0.19 CFS		63.4 AF

LOCATION OF RENTER'S POINT(S) OF DIVERSION:

Under water right 74-14993:

LEMHI RIVER SW1/4SE1/4SE1/4 Sec 24, Twp 21N, Rge 22E, B.M. LEMHI County
(Beginning of Reach)

LEMHI RIVER L9 (SW1/4SW1/4SW1/4) Sec. 32, Twp 22N, Rge 22E, B M LEMHI County
(Ending of Reach)

RENTER'S PLACE OF USE:

INSTREAM FLOW WITHIN DESIGNATED STREAM REACH FROM THE BEGINNING POINT TO THE ENDING POINT DESCRIBED ABOVE

CONDITIONS OF WATER USE

1. This rental is limited to the consumptive portions of the leased parts of rights 74-2320 and 74-15190, and is limited to a combined diversion volume of 45.3 afa and a continuous diversion rate of 0.14 cfs for use from June 1 to November 15, 2006.
2. This rental agreement authorizes use of water for the described purpose during the 2006 irrigation season and may be extended through 2015 pending the outcome of notice of the intended rental as required in Section 42-222(1) Idaho Code.
3. Delivery of water in accordance with this rental agreement shall be subject to the limitations and conditions of water right 74-14993
4. The use of water under this agreement shall be subject to the provisions of Section 42-1766, Idaho Code
5. Rental of the specified right from the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication or any other department application process

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WATER RIGHT NO(S). 74-15190
WATER SUPPLY BANK RENTAL AGREEMENT.

CONDITIONS OF WATER USE

6. Upon Department request, the renter shall provide for the measurement of the water diverted in a manner acceptable to the Director and shall report the amount of water diverted at the end of the irrigation season
7. Use of water under this agreement does not constitute a dedication of the water to renter's place of use and upon expiration of this agreement, the points of diversion and place of use of the water shall revert those authorized under the water right and/or again be available to rent from the bank.
8. This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party
9. Renter agrees to comply with all applicable state and federal laws while using water under this agreement
10. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water
11. Renter acknowledges and agrees that the Director may terminate diversion of water if the Director determines there is not a sufficient water supply for the priority of the right or portion thereof being rented
12. Failure of the right holder to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.

APPENDIX B

NOTICE OF PROTEST

11/07

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

APR 08 2008

DEPARTMENT OF
WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Idaho Water Resource Board venting a portion of water right nos. 74-2320 and 74-15170
2. Name of protestant JAMES WHITTAKER
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address P.O. 240 Healdore, Idaho 83464
5. Service telephone no. 208-768-3471 Email Address: EdWhitt@yahoo.com
6. Basis of protest (including statement of facts and law upon which the protest is based)

Idaho Code 42-1506 (2) The "Board" shall appropriate the minimum stream flow right authorized under this section in accordance with the provisions of section 42-1503 Idaho Code - Approval (p) public, necessary to private interest (2) is capable of being maintained as evidenced by records of stream flow.

7. What would resolve your protest? The "Board" would have to provide records that show that these (1) late right & (1) high flow right could be maintained

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 2 day of April, 20 08

James Whittaker
Protestant

Protestant's Representative