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MAY 26 2010

DEPARTMENT OF
WATER RESOURCES

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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 ("IWRB" 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 2010 rental period only. Whittaker acknowledges that the Rental Agreement can be implemented beginning on June 1, 2010 and continue until and including November 15, 2009. 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 2011-2015 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 2010 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, 2011, and will provide reported flow data to Whittaker upon reasonable demand during the 2010 irrigation season if requested by Whittaker.
3. The IWRB shall continue to 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, 2010, 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.

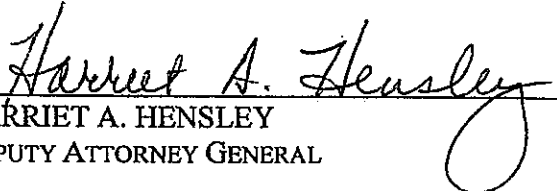
B. MISCELLANEOUS PROVISIONS

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, 2010.

IDAHO WATER RESOURCE BOARD


HARRIET A. HENSLEY
DEPUTY ATTORNEY GENERAL

Dated this 24th day of May, 2010.


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

CERTIFICATE OF SERVICE

I certify that on the 25th day of May 2010 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

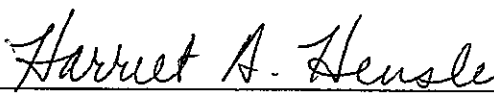
2. Copies to:

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