

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 | ) | <b>NOTICE OF HEARING</b> |
| IN THE NAME OF THE IDAHO WATER        | ) | <b>CONFERENCE</b>        |
| <u>RESOURCE BOARD</u>                 | ) |                          |

On May 2, 2006, the Idaho Water Resource Board ("TWRB or Board") filed an application to rent a portion of water right nos. 74-2320 and 74-15190 from the Water Supply Bank for the purpose of instream flow.

On April 8, 2008, James Whittaker filed a Protest of the application. A prehearing conference is requested to reach a resolution of the protested application.

The pre-hearing conference was held on December 4, 2008, at the Leadore Community Center, 202 S. Railroad, Leadore, Idaho, (208)768-2612 or (208)768-2640.

**NOTICE OF HEARING**

**PLEASE TAKE NOTE that a formal hearing will be held on March 11, 2009 at 1:30 P.M. at the Idaho Water Resource office, 900 N Skyline Dr, Ste A, Idaho Falls ID.**

The hearing will be held in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources. A copy of the rules may be obtained from the Department upon request.

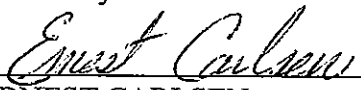
The presiding officer at the hearing will be Gary Spackman, whose mailing address is PO Box 83720, Boise ID 83720-0098.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 15 day of January 2009.

  
\_\_\_\_\_  
ERNEST CARLSEN  
Water Resource Program Manager

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</sup> day of January 2009, a true and correct copy of the document(s) described below were served by placing a copy of the same in the United States mail, certified with return receipts, postage prepaid and properly addressed to the following:

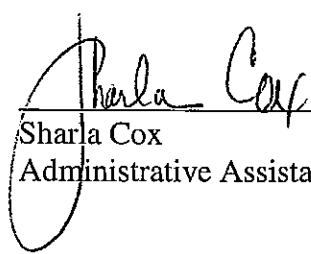
Document Served: Notice of Hearing Conference

James Whittaker  
P. O. Box 240  
Leadore, ID 83464

☒ U.S. Mail, Postage Prepaid  
☐ Facsimile  
☐ E-mail

Morgan Case  
IWRB  
P.O. Box 83720  
Boise, ID 83720-0098

☐ U.S. Mail, Postage Prepaid  
☐ Facsimile  
☒ E-mail

  
\_\_\_\_\_  
Sharla Cox  
Administrative Assistant

## APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK

Section 42-1763, Idaho Code, requires the department to consider the following issues in connection with an application for rental of water from the water supply bank:

1. Will reduce the quantity of water available under other existing water rights?
2. Is the water supply sufficient for the purpose for which it is sought?
3. Would the rental cause the use of water to be enlarged beyond that authorized under the water right to be rented?
4. Will the rental conflict with the local public interest as defined in section 42-202B, Idaho Code?
5. Will the rental adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates?

### BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3 and 5 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 4 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

### PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

### CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, schedule discovery, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

### HEARING

A hearing will be conducted according to Sections 41-1701A(1) and (2), Idaho Code and Rules of Procedure. Copies of the Department's Rules of Procedure and Idaho Code are available upon request or by accessing the Department's website at: [www.idwr.idaho.gov](http://www.idwr.idaho.gov). The department will record the hearing. Copies of a hearing are available upon request and there may be a charge for the cost of reproducing the recording.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended or preliminary order. Parties can petition for reconsideration of a decision or file exceptions. A brief to support the exceptions may request oral argument. Parties may seek judicial review of any final order issued by the director.

### EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

#### **AMERICANS WITH DISABILITIES ACT**

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department no later than ten (10) days prior to the hearing.

# HEARING CONFERENCE

Date: December 4, 2008  
 Time:  
 Presiding Officer: Ernest Carlsen  
 Assisted by:

## ROSTER OF ATTENDANCE

| NAME           | ADDRESS, CITY, ZIP<br>PHONE NUMBER                    | REPRESENTING            |
|----------------|-------------------------------------------------------|-------------------------|
| James Whitaker | 208-568-2491<br>P.O. Box 60 Leadore, Id 83464         | Myself                  |
| April Hawkes   | 406 370-4567<br>594 Sunny Lane Hamilton, MT 59840     | James Whitaker          |
| Morgan Case    | 322 E. Front St. Boise, ID 83720-0098<br>208.287.4838 | WRB                     |
| Carl Ellsworth | P.O. Box 60 Leadore Id 83464                          | Ellsworth Higgins Ranch |
|                |                                                       |                         |
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